TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 713

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLANTS

vs.

THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

FILED FEBRUARY 9, 1940

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INDEX

A [Caption omitted.]

1 In District Court of the United States for the District of Columbia

Civil Action, File No. 3200

THE AMERICAN TRUCKING ASSOCIATIONS, INC., 1013 SIXTEENTH STREET NW., WASHINGTON, D. C.; BARNWELL BROTHERS, INCORPORATED, HAWKINS STREET, BURLINGTON, NORTH CAROLINA; BROOKS TRANSFER AND STORAGE COMPANY, 1301 NORTH BOULEVARD STREET, RICHMOND, VIRGINIA; BROOKS TRANSPORTATION COMPANY, 1301 NORTH BOULEVARD STREET, RICHMOND, VIRGINIA; THE BALTIMORE TRANSFER COMPANY OF BALTIMORE CITY, MONUMENT STREET AND GUILFORD AVENUE, BALTIMORE, MARYLAND, PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Complaint

Filed June 22, 1939

(Action to compel the Interstate Commerce Commission to take jurisdiction respecting qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle.)

The plaintiffs respectfully represent unto the Court, that:

1. This action arises under the Act of Congress, approved August 8, 1935, known and cited as the Motor Carrier Act, 1935 (49 U. S. C. 301, et seq.), which will hereinafter be referred to as the "Motor Carrier Act." The jurisdiction of the Court is invoked under the provisions of the Urgent Deficiency Appropriations Act (38 Stat. L. 219, 220; 28 U. S. C. 43, 47) as applied and extended by section 205 (h) of the Motor Carrier Act.

2. The plaintiff, American Trucking Associations, Inc., is a membership corporation organized under the laws of the District of Columbia as the national trade organization of the motor carrier industry, and has its principal place of business in the District of Columbia. Its membership comprises approximately thirty thousand carriers engaged in interstate commerce and subject to regulation under the Motor Carrier Act. It is owned and
2 managed by the industry and acts for the industry in matters of general and national importance, including matters arising before the Interstate Commerce Commission, and by reason thereof did represent said industry in all of the pro-

ceedings before the Interstate Commerce Commission involving hours of service of employees of common and contract carriers, and particularly the proceedings entitled "MC C–139" and "Ex Parte MC–28," hereinafter referred to, and was a proper party in those proceedings. It brings this action as a party in interest and as representative of a class of persons having a common interest in and alike affected by the subject matter who are too numerous to be brought before the Court.

3. The plaintiff, Barnwell Brothers, Inc., is a corporation organized under the laws of the State of North Carolina, having its general offices at Burlington, North Carolina. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from North Carolina to New York, both included, and by reason of such operations, plaintiff is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 150 trucks, employs 380 employees, of which approximately one-half are employees whose duties do not affect safety of operation of motor vehicles, and has an average annual pay roll of $500,000.

4. The plaintiff, The Baltimore Transfer Company of Baltimore City, is a corporation organized under the laws of the State of Maryland, having its general offices at Baltimore, Maryland, and its principal operating office for Washington, D. C., at 128 Q St. NE. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from New York City to Petersburg, Virginia, both included, and by reason of such operations, is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 150 motor vehicles, employs 285 employees, of which approximately one-half are employees whose duties do not affect safety of operation of motor vehicles, and has an average annual pay roll of $400,000.

5. The plaintiff, Brooks Transfer and Storage Company, is a corporation organized under the laws of the State of Vir-
3 ginia, having its headquarters and principal place of business at Richmond, Virginia. It is engaged in the business of transporting, as a common carrier by motor vehicle, used household goods to, from, and between various points and places in all states East of the Mississippi River, and by reason of such operations, is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 65 vehicles, employs 100 employees, of which approximately one-half are employees whose duties do not affect safety of operation of motor vehicles, and has an average annual pay roll of $125,000.

6. The plaintiff, Brooks Transportation Company, is a corporation organized under the laws of the State of Virginia, having its headquarters and principal place of business at Richmond, Virginia, and its principal operating office for Washington, D. C., at 9 L St. SW. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from North Carolina to New York, both included, and by reason of such operations, it is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 99 trucks, employs 250 employees, of which approximately one-half are employees whose duties do not affect safety of operation of motor vehicles, and has an average annual pay roll of approximately $350,000.

7. As more particularly appears hereinafter, the defendant Interstate Commerce Commission issued an order under date of June 15, 1939, in a matter entitled before it as "MC C–139," denying a petition filed by the plaintiffs to exercise its jurisdiction to hold hearings and receive evidence and to prescribe qualifications and maximum hours of service of employees whose duties had no relation to safety of operation of motor vehicles. The said order is based upon a supposed lack of power to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle. The said Commission's conclusion is that the Motor Carrier Act invested it with power to establish such requirements only with respect to those employees whose duties affect the safety of operation of motor vehicles. The plaintiffs allege that the said Commission was plainly invested with power to establish such requirements with respect to all employees of such carriers, that it erroneously construed the Motor Carrier Act, and that the said order is invalid and should be annulled and set aside as being based upon an error or mistake of law. The plaintiffs further allege that the order is invalid and should be annulled and set aside as being arbitrary and capricious in that the said Commission refused to hold a hearing, receive testimony, and consider the merits of the case. Thus, the plaintiff say, that the Commission's action is erroneous and arbitrary and that it should be compelled to take jurisdiction of the said petition, consider the merits of the case, and exercise a sound discretion in prescribing such reasonable regulations as it may find to be necessary or proper.

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8. The business of transporting passengers and property in interstate and foreign commerce by motor vehicle for hire has long been recognized as one impressed with public interest and requiring regulation to eliminate unfair and destructive competitive practices, to promote economical and efficient service, and to establish standards of safety for the protection of the public.

The National Industrial Recovery Act (15 U. S. C. 701), was enacted by Congress for the declared purpose of correcting disorganization of industry, removing obstructions to the free flow of commerce, reducing unemployment, improving standards of labor, and eliminating unfair competitive practices. Under the said Recovery Act a code of fair competition for the trucking industry was approved on February 10, 1934, as approved Code No. 278. Among other things, the Code of Fair Competition for the Trucking Industry contained provisions for maximum hours of service for all classes of employees, and provisions for exemptions, exceptions, and qualifications based upon the problems peculiar to the business and the different types of motor carrier operations. While the said Code was still taken and considered to be in full force and effect, the Congress began consideration of legislation to regulate transportation of passengers and property by motor vehicle in interstate and foreign commerce as a part of and in correlation with the regulation of other types of transportation agencies. The Congress enacted the Motor Carrier Act, and vested the jurisdiction in the Intersfate Commerce Commission to regulate such transportation and the facilities thereof, making the said Act Part II of the Inter-
5 state Commerce Act. In and by sections 202 (a), (b), and 204 (a), (1), (2), (3), and 204 (b), of the Motor Carrier Act, which are here quoted for the convenience of the Court, it is provided:

"DECLARATION OF POLICY AND DELEGATION OF JURISDICTION

"SEC. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

"(b) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or

foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission."

"GENERAL DUTIES AND POWERS OF THE COMMISSION

"SEC. 204. (a) It shall be the duty of the Commission—

"(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(3) To establish for private carriers of property by motor vehicle if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event that such requirements are established, the term 'motor carrier' shall be construed to include private carriers of property by motor vehicle in the administration of sections 204 (d) and (e); 205; 220; 221; 222 (a), (b), (d), (f), and (g); and 224."

* * * * *

"SEC. 204. (b) The provisions of any code of fair competition for any industry embracing motor carriers or for any subdivision thereof approved pursuant to the National Industrial Recovery Act or any present or future Act amendatory thereof, or supplementary thereto, or in substitution therefor, which is in conflict or inconsistent with any action under the provisions of this part, shall have no force or effect after this section becomes effective."

6 9. In or about July of 1936, the defendant Interstate Commerce Commission instituted a proceeding to consider the matter of maximum hours of service of employees of common and contract carriers under the Motor Carrier Act. This proceeding was entitled "Ex Parte MC-2," and is reported in 3 M. C. C. 665, 6 M. C. C. 555, and 11 M. C. C. 203. As the

result of its consideration of the subject, the said Commission prescribed qualifications and maximum hours of service of drivers of motor vehicles operated by common and contract carriers. It expressed some doubt as to its jurisdiction to prescribe qualifications and maximum hours of service for other employees of such carriers, but did not undertake to pass upon the question.

10. After the Fair Labor Standards Act (29 U. S. C. 201, et seq.) became effective, the defendant Interstate Commerce Commission instituted a proceeding to determine the extent of its jurisdiction over employees of common, contract, and private carriers under Section 204 (a) of the Motor Carrier Act, entitling the said proceeding as "Ex Parte No. MC-28." By virtue of the provision in Sec. 13 (b) of said Fair Labor Standards Act exempting as to hours of service, employees with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, the defendant Interstate Commerce Commission gave notice in said proceeding that it would determine the extent of its jurisdiction to establish such requirements for employees of common and contract carriers. Without taking any testimony as to what, if any, requirements should be imposed at this time with respect to such employees other than drivers of motor vehicles, the said Commission set the matter down for argument, and undertook to decide its jurisdiction in said proceeding solely on the basis of deciding a question of law, and of thereby determining the extent of its jurisdiction. After receiving briefs and hearing arguments upon the question so raised by it, the defendant Interstate Commerce Commission issued a report and entered an order in said Ex Parte No. MC-28 on the 9th day of May 1939, in and by which it expressed the conclusion that it had no jurisdiction to establish reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle other than for those employees whose activities affect the safety of operation of motor vehicles, and by virtue of its conclusions so recited in the report discontinued the proceeding. A copy of the said report and order it attached hereto, marked "Exhibit A," and prayed to be taken and considered as a part hereof.

11. Being advised that the action of the defendant Interstate Commerce Commission in discontinuing the said proceeding entitled Ex Parte MC-28 was merely advisory and not, insofar as they were concerned, a determination of the issue involved, the plaintiffs, feeling that there was and is a present need for the said Commission to exercise its jurisdiction and prescribe reasonable require-

ments with respect to qualifications and maximum hours of service of those employees of common and contract carriers by motor vehicle whose duties do not affect the safety of operation of motor vehicles, filed a petition with the said Commission, setting forth some of the grounds or reasons why such requirements should be established, and praying that the Commission exercise its jurisdiction with respect to the subject matter, disregard its opinion expressed in said Ex Parte MC–28, hold hearings and establish such reasonable requirements as might be made to appear to it to be necessary or proper in the exercise of a sound judgment or consideration of the matter. A copy of said petition is attached hereto, marked "Exhibit B," and prayed to be taken and considered as a part hereof. When filed, said petition was entitled before the said Commission as No. MC C–139. Under date of June 15, 1939, the defendant Interstate Commerce Commission handed down a report and order in MC C–139 in and by which it denied the said petition upon the ground that, for the reasons set forth in its report of May 9, 1939, in Ex Parte No. MC–28, it lacked the power to prescribe the regulations sought. In its view of the matter, the Commission deemed it to be futile to hold hearings as requested in and by the petition and thus declined to consider the matter upon the merits. A copy of said report and order is attached hereto, marked "Exhibit C" and prayed to be taken and considered as a part hereof.

12. The plaintiffs allege that the said order of the defendant Interstate Commerce Commission in MC C–139 is illegal and void, and should be annulled and set aside, in that:

8 (a) The Motor Carrier Act plainly invests the said Commission with the power and duty to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle.

(b) The said Commission arbitrarily undertook to construe section 204 (a) (1) and (2) when there was and is no ambiguity in the said section or inconsistency with other sections of the Motor Carrier Act which would require or warrant construction, and in so doing, read into the said section words and meaning not contained therein.

(c) The said Commission erred in construing the said section 204 (a) (1) and (2) to mean that the power to establish reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle is the same as that in respect of employees of private carriers by motor vehicle, provided for in section 204 (a) (3), thus disregarding differences between the respective provisions of the

statute, and fundamental differences in its general jurisdiction over common and contract carriers as opposed to its limited jurisdiction over private carriers.

(d) If the said Commission properly undertook to construe the said section 204 (a) (1) and (2), it erred in not holding that the said section was designed to and did invest it with power to prescribe such requirements with respect to all employees of common and contract carriers by motor vehicle, particularly in view of the legislative history of the Motor Carrier Act, and other contemporaneous and related acts.

(e) The said Commission arbitrarily and capriciously refused to hold a hearing, receive testimony, and consider the merits of the case.

13. The action of the defendant Interstate Commerce Commission in issuing its said order of June 15, 1939 in MC C–139 is injurious to the plaintiffs and others similarly situated, and unless the said order is annulled and set aside they will suffer great and irreparable loss and damage, in that:

(a) They are being subjected to demands for compliance with the inflexible statutory provisions in the Fair Labor Standards Act, under which coordination of transportation service with other carriers, all of which are exempted therefrom,
9 and the rendering of adequate public service will be impossible, thereby depriving plaintiffs of a substantial portion of their business.

(b) They are, and will be, subjected to demands for compliance with conflicting and diverse regulations in each state and municipality in and through which their operations extend, instead of uniform regulation under the Motor Carrier Act, all of which is inconsistent with and a burden to the business of transporting interstate commerce, by reason of the provision in the Fair Labor Standards Act preserving the effectiveness of any state laws or municipal ordinances more restrictive in its terms than those imposed by the said Fair Labor Standards Act, and by reason of the State laws applicable to qualifications and maximum hours of service being in full force and effect until the Commission acts within the frame of the Motor Carrier Act.

(c) They will be subjected to prohibitive overtime wage penalties, regardless of the fact that the normal work wage is in no instance lower, and generally far exceeds the minimum wage provisions of the Fair Labor Standards Act, because much of the transportation service performed by them is sporadic, having peak periods and emergency demands requiring them to retain skilled employees at full pay for stand-by service, although actual working time may be as low as 30% of pay time, such as is frequently

the case in the service to oil fields, and to a lesser but important extent the same is true in the handling of household goods, and the Fair Labor Standards Act contains no provision for averaging hours of service over an adequate period of time to cover such peak periods and emergencies usual to and necessary to be met in rendering transportation service.

(d) They are, and will be, subjected to demands by employees for penalty overtime wages provided for in the Fair Labor Standards Act, both retroactively to June 25, 1938, and prospectively, thus making them liable to a multiplicity of suits.

(e) They are, and will be, subjected to the risk of large and burdensome penalties and of criminal prosecutions under the Fair Labor Standards Act and under the laws of the several states in and through which they operate.

(f) They are, and will be, subject to claims of abrogation of existing labor agreements with resulting labor controversies and the risk of strikes and disruption of service.

(g) They are, and will be, subjected to unfair and destructive competitive practices in violation of the declared purpose of the Motor Carrier Act.

Wherefore, the premises considered, the plaintiffs, and each of them, pray that:

1. The Court adjudge the order issued by the Interstate Commerce Commission under date of June 15, 1939, in MC C-139, to be illegal and void, and enter a decree annulling and setting aside the said order.

2. The Court enter a decree adjudging that the Interstate Commerce Commission is invested with the power and duty under the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle.

3. The Court issue a mandatory injunction requiring the defendant Interstate Commerce Commission to take jurisdiction of the plaintiffs' petition in MC C-139, consider the matter of establishing reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle, and exercise a sound judgment or discretion in establishing such reasonable requirements as to it may appear to be necessary or proper.

J. NINIAN BEALL,
ALBERT F. BEASLEY,
Attorneys for Plaintiffs.

Exhibit A to complaint

Interstate Commerce Commission

Ex Parte No. MC–28

JURISDICTION OVER EMPLOYEES OF COMMON, CONTRACT, AND PRIVATE MOTOR CARRIERS UNDER SECTION 204 (A) OF MOTOR CARRIER ACT, 1935

Submitted December 16, 1938. Decided May 9, 1939

Authority to prescribe qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle under section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, held limited to prescribing such regulations for those employees whose activities affect the safety of operation of motor vehicles

J. Ninian Beall, Edward S. Brashears, Reagan Sayers, Harold S. Shertz, Howell Ellis, Robert M. Davitt, Irving C. Fox, John R. Turney, Jr., Ivan Bowen, for carriers and associations of carriers; and Joseph A. Padway, David Kaplan, O. David Zimring, for organized labor.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By order entered November 2, 1938, we instituted this proceeding on our own motion for the purpose of determining the extent of our jurisdiction under section 204 (a) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle, and private carriers of property by motor vehicle. In our decision in Ex Parte No. MC–2, Maximum Hours of Service of Motor Carrier Employees, 3 M. C. C. 665, we indicated that in our view our jurisdiction under that section of the Motor Carrier Act extended only to employees whose activities affect the safety of operation of motor vehicles.

Since our decision in the case cited, the Fair Labor Standards Act became effective. Section 13 (b) of that act reads as follows:

"The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and

maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act."

Because of this exemption in the Fair Labor Standards Act, the question of whether our jurisdiction under section 204 (a) of the Motor Carrier Act, 1935, extends to all employees of carriers, or only to those whose activities affect the safety of operation of motor vehicles, becomes of great importance to carriers and employees alike. Therefore, this proceeding was instituted. We gave interested parties an opportunity to file briefs, and heard them in oral argument.

Representatives of common and contract carriers, with one exception, assert that our jurisdiction under section 204 (a) (1) and (2) extends to all employees of common and contract carriers, and is not limited to those employees whose activities affect the safety of operation. Representatives of organized labor, on the other hand, contend that our jurisdiction is limited to employees whose activities affect the safety of operation.

All agree that our jurisdiction under section 204 (a) (3), because of the different wording of that section, extends only to those employees of private carriers of property whose activities affect the safety of operation.

Section 204 (a) (1) of the Motor Carrier Act reads as follows:

"It shall be the duty of the Commission—(1) to regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements
13 with respect to continuous and adequate service, transportation of baggage and express, uniform system of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment."

The last two phrases of section 204 (a) (2) in respect of our powers over contract carriers are identical with those above quoted from the section relating to common carriers.

Section 204 (a) (3) reads as follows:

"To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term 'motor carrier' shall be construed to include private carriers of property by motor vehicle in the administration of sections 204 (d) and (e); 205, 220; 221–222 (a); (b), (d), (f), and (g); and 224."

We shall first dispose of the limited question of the extent of our power to prescribe qualifications and maximum hours of serv-

ice for employees of private carriers of property, using the word "power" herein in view of the fact that it is the word used in the exemption contained in section 13 (b) of the Fair Labor Standards Act quoted above. Because of the precise wording of section 204 (a) (3) we have no doubt that our power under that section is limited to prescribing qualifications and maximum hours of service for those employees only whose activities affect the safety of operation of motor vehicles engaged in transporting property in interstate and foreign commerce. It is clear to us that we have power to prescribe qualifications and maximum hours for drivers and their helpers employed by private carriers of property who are engaged in driving or operating motor vehicles transporting property in interstate and foreign commerce.

14 It may be that the activities of other employees are such that "to promote safety of operation" we have power to prescribe qualifications and maximum hours of service for them. As to what classes or types of employees, if any, may be included in this category, we do not decide here.

It is to be noted that the language of section 204 (a) (1) and (2) differs from that used in section 204 (a) (3) primarily because the phrase "to promote safety of operation" does not appear in these first two mentioned paragraphs. Representatives of the carriers contend that the language used is clear, simple, and unambiguous. They rely on one of the well-established rules of statutory construction that where such language is used it must be construed according to its terms. This rule is briefly stated by the Supreme Court of the United States in the case of Caminetti v. United States, 242 U. S. 470, at page 485, as follows:

"It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms."

It is to be noted that the word "employees" is not modified or limited in any manner, and it is therefore contended that the term includes all employees irrespective of the character of the employment. If this interpretation were sound, our power would extend to prescribing maximum hours of service not only for those employees whose activities affect the safety of operation, but to such employees as stenographers, clerks of all classes, foremen, superintendents, salesmen, and employees acting in an executive capacity.

15 There are, however, well established exceptions to the rule of statutory construction relied upon by the carriers. In the case of Ozawa v. United States, 260 U. S. 178, the court said:

"It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words

their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail."

In the case of Sorrells v. United States, 287 U. S. 435, the Supreme Court had occasion to consider this rule and amplify the views expressed in the Ozawa case. In its decision the court said:

"Literal interpretation of statutes at the expense of the reason of the law and producing absurd consequences or flagrant injustice has frequently been condemned. In United States v. Palmer, 3 Wheat. 610, 631, Chief Justice Marshall, in construing the Act of Congress of April 30, 1790, section 8 (1 Stat. 113) relating to robbery on the highseas, found that the words 'any person or persons' were 'broad enough to comprehend every human being,' but he concluded that 'general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the legislature intended to apply them.' In United States v. Kirby, 7 Wall. 482, the case arose under the Act of Congress of March 3, 1825 (4 Stat. 104), providing for the conviction of any person who 'shall knowingly and willfully obstruct or retard the passage of the mail, or of any driver or carrier * * * carrying the same.' Considering the purpose of the statute, the Court held that it had no application to the obstruction or retarding of the passage of the mail or of its carrier by reason of the arrest of the carrier upon a warrant issued by a state court. The Court said: 'All laws should receive a sensible construction. General terms should be so limited in their application as not to lead
16 to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.' And the Court supported this conclusion by reference to the classical illustrations found in Puffendorf and Plowden. Id., pp. 486, 487.

"Applying this principle in Lau Ow Bew v. United States, 144 U. S. 47, the Court decided that a statute requiring the permission of the Chinese government, and identification by certificate, of 'every Chinese person other than a laborer,' entitled by treaty or the act of Congress to come within the United States, did not apply to Chinese merchants already domiciled in the United States, who had left the country for temporary purposes, animo revertendi, and sought to reenter it on their return to their business and their homes. And in United States v. Katz, 271 U. S.

354, 362, construing section 10 of the National Prohibition Act so as to avoid an unreasonable application of its words, if taken literally, the Court again declared that 'general terms descriptive of a class of persons made subject to a criminal statute may, and should be, limited where the literal application of the statute would lead to extreme or absurd results, and where the legislative purpose gathered from the whole Act would be satisfied by a more limited interpretation.'" See, to the same effect, Heydenfeldt v. Daney Gold Mining Co., 93 U. S. 634, 638; Carlisle v. United States, 16 Wall. 147, 153; Oates v. National Bank, 100 U. S. 239; Chew Heong v. United States, 112 U. S. 536, 555; Holy Trinity Church v. United States, 143 U. S. 457, 459–462; Hawaii v. Mankichi, 190 U. S. 197, 212–214; Jacobson v. Massachusetts, 197 U. S. 11, 39; United States v. Jin Fuey Moy, 241 U. S. 394, 402; Baender v. Barnett, 255 U. S. 224, 226; United States v. Chemical Foundation, 272 U. S. 1, 18.

Other decisions to the same effect could be quoted and cited, but we deem the foregoing sufficient.

In the argument before us representatives of carriers dealt only with the phrase "maximum hours of service of employees." It cannot be overlooked, however, that wherever that phrase is used it is preceded by the word "qualifications," so that the entire phrase reads "qualifications and maximum hours of service of employees." It necessarily follows that if we have the
17 power to prescribe maximum hours of service for all employees we likewise have the power and duty to prescribe qualifications for all types of employees.

We found it a comparatively simple task to prescribe qualifications, from the point of view of safety of operation, for those employees of common and contract carriers who are engaged in driving and operating motor vehicles in interstate and foreign commerce, in our order of December 23, 1936, in Motor Carrier Safety Regulations, 1 M. C. C. 1. By rule 1, part I of those safety regulations, we prescribed:

* * * * *

"3. On and after July 1, 1937, no motor carrier shall drive, or require or permit any person to drive, any motor vehicle operated in interstate or foreign commerce, unless the person so driving possesses the following minimum qualifications:

"(a) Good physical and mental health.

"(b) No physical deformity or loss of limb likely to interfere with safe driving.

"(c) Good eyesight in both eyes (either without glasses, or by correction with glasses), including adequate perception of red and green colors.

"(d) Adequate hearing.

"(e) Experience in driving some type of motor vehicle (including private automobiles) for not less than one year, including experience throughout the four seasons.

"(f) Competency by reason of experience or training to operate safely the type of vehicle or vehicles which he drives.

"(g) Knowledge of rules and regulations issued by the Commission under the Motor Carrier Act, 1935, pertaining to the driving of motor vehicles.

"(h) Shall not be addicted to the use of narcotic drugs.

18 "(i) Shall neither use, nor be under the influence of, any alcoholic liquor or beverage while on duty, nor otherwise make excessive use thereof.

"(j) Not less than 21 years of age, unless the person was engaged in so driving on July 1, 1937, or within one year prior thereto, but in no case less than 18 years of age.

"(k) Ability to read and speak the English language, unless the person was engaged in so driving on July 1, 1937, or within one year prior thereto, but in any case ability to understand traffic and warning signs."

The qualifications for drivers so prescribed, for the particular purpose in view, have been accepted by the industry as practical and reasonable, and have been adopted by the officials of a number of States. Our experience and the study we necessarily made in connection with the administration of the Motor Carrier Act qualify us to prescribe such regulations to promote safety of operation. Quite the contrary would be true if we were called upon to prescribe general qualifications for all employees of such carriers. In the case of clerks, salesmen, and employees acting in an executive capacity, physical infirmities have little, if any, effect upon the ability of an employee to perform satisfactory work. Education and training are important qualifications for such employment, but other and more intangible factors are of like importance. An employee's personality, appearance, ambition, and industry are valuable and important attributes. It would be a very difficult task, and one wholly foreign to the Commission's normal functions, to prescribe standards for such qualifications. It is our opinion that if the statute is interpreted to give us the power to prescribe general qualifications for all employees, it would lead to an unreasonable, if not an absurd, result, and we

19 must, therefore, under the rule of statutory construction already referred to, determine the intent of Congress from the legislative history of the enactment and consideration of the purposes of the act as a whole.

The bill which later became the Motor Carrier Act, 1935, when it was reported by the Committees of both the Senate and House of Representatives did not contain the provisions in section 204

which are here involved. That section then made no reference to qualifications and maximum hours of service of employees. The only reference to those matters was found in section 225, and there the only authority given us was to investigate and report on the need for Federal regulation. Section 204 was amended on the Senate floor to its final form, and the debate on this amendment was brief. The amendment was later adopted by the House. The chairman of the Interstate Commerce Committee of the Senate, who submitted the amendment in behalf of that Committee, made a statement which appears at page 5887 of Volume 79 of the Congressional Record. He pointed out that in the bill as reported the function of the Commission was merely to investigate and report to Congress. In speaking of the Committee's amendment, he added, "then we gave them the power in section 204." In that statement the chairman referred to the testimony of a member of this Commission before the Senate committee, and indicated that the action of the committee was primarily based upon this statement. An examination of the testimony of the Commissioner, who was at that time chairman of our legislative committee, discloses that he dealt with the subject of qualifications and maximum hours of service of employees from the standpoint of safety, and safety alone. There is, further, the negative evidence that nothing can be found in the Congressional debates on the measure nor in the statements of those who appeared at the prior committee hearings, nor in the entire history of the act, which warrants the conclusion that it was ever the intent to give the Commission power, extending far beyond its normal functions, to prescribe qualifications and maximum hours of service of employees for general social, economic, or business purposes. While the legislative history of this particular provision is meager, it clearly indicates that these particular provisions of section 204 were intended to relate to the safety of operation of motor vehicles.

Section 204 (a) (1) and (2) deals primarily with the usual subjects of regulation such as continuous and adequate service, transportation of baggage and express, uniform system of accounts, records, and reports, and the preservation of records. Then follows the phrase "qualifications and maximum hours of service of employees and safety of operation and equipment." Reading this last phrase as a whole, and in view of the legislative history and the general purpose of the act, it seems clear that the intent of Congress was that our power in these regards should be limited to employees whose activities affect the safety of operation.

This view is further supported by the situation which confronted Congress at the time of the enactment. The use of motor vehicles had increased in this country to such an extent that many thou-

sands of persons were killed and hundreds of thousands injured each year in motor accidents. This situation was undoubtedly in the mind of Congress. Congress was also aware of the fact that many States had enacted statutes prescribing maximum
21 hours of service for drivers of motor vehicles operated in intrastate commerce by for-hire carriers. An examination of the State statutes in effect at the time of the enactment of the Motor Carrier Act discloses that while 43 States had enacted statutes prescribing maximum hours of service for drivers of motor vehicles operated by for-hire carriers, none of these statutes dealt with maximum hours of other employees. It is reasonable to assume that Congress intended by the provisions of section 204 to give the Commission the same authority over carriers engaged in interstate commerce that the State governments had found it expedient to exercise as to carrier engaged in intrastate commerce.

The legislative history of the Fair Labor Standards Act likewise should be considered. In that statute Congress dealt with maximum hours and minimum wages of employees generally. It is part of the history of the times that Congress held lengthy debates lasting over two sessions before the legislation was enacted, and that, by statute, it fixed the maximum hours and minimum wages and did not leave those important questions to an administrative tribunal. This being so, we cannot believe that the Congress intended by the brief provisions of section 204, enacted after the limited debate indicated above, to give us the broad power to prescribe qualifications and maximum hours of service for all employees of motor carriers.

Further, it is to be noted that neither in the Fair Labor Standards Act, nor any other Federal or State enactment with which we are familiar, has an administrative body been empowered to prescribe general qualifications for all classes of employees.

Finally, it is worthy of consideration that the only standard which section 204 provides for our guidance in prescribing qualifications and maximum hours of service is to be found in the
22 word "reasonable." Such a standard is sufficient in dealing with safety of operation or other matters where there is an extensive background of experience and precedent, but it is inconceivable that Congress would have deemed that single word sufficient if it had expected us to enter the new and unexplored field of fixing qualifications and maximum hours of service of all employees for general social, economic, or business purposes.

For the reasons stated, we conclude that our power under section 204 (a) (1) and (2) is limited to prescribing qualifications and maximum hours of service for those employees of common and contract carriers whose activities affect the safety of operation of motor vehicles engaged in transporting passengers and

property in interstate and foreign commerce, and for the purpose of promoting such safety of operation. That power undoubtedly extends to drivers of such vehicles. It may well be that the activities of some employees other than drivers likewise affect the safety of operation of motor vehicles engaged in interstate and foreign commerce. If common and contract carriers, or private carriers of property, or their employees believe that the activities of employees other than drivers affect the safety of operation of motor vehicles engaged in interstate and foreign commerce, they may file an appropriate petition, asking that a hearing be held and the question determined.

Ex Parte No. MC–2 is a proceeding instituted on our own motion for the purpose of prescribing reasonable regulations governing the maximum hours of service of employees of common and contract carriers engaged in the transportation of passengers or
23 property in interstate or foreign commerce. At the argument in that case, counsel for the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, contended that, while our authority to prescribe maximum hours of service for common and contract carriers was limited to those employees whose activities affect the safety of operation, we may, when that class has been ascertained, consider other factors in determining the maximum hours to be prescribed. He referred to general economic and sociological factors, including the general unemployment situation. In our report in that case under date of January 27, 1939, Maximum Hours of Service of Motor Carrier Employees, 11 I. C. C. 203, we said, at page 212:

"We find it unnecessary here to express our views on that question because, as we pointed out in the prior report, no evidence has been submitted as to this matter. In our decision in Ex Parte No. MC–28, which involves the extent of our jurisdiction under the provisions of section 204 of the Motor Carrier Act, 1935, we may determine whether factors other than the safety of operation may be considered in prescribing maximum hours of service for motor carrier employees."

We have reached here the conclusion that our jurisdiction under section 204 (a) (1), (2), and (3) is limited to prescribing maximum hours of service for employees whose activities affect the safety of operation. At the oral argument in Ex Parte No. MC–2 attention was directed to the provisions of section 202 (a) of the Motor Carrier Act, and particularly to that part which reads as follows:

"It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such a manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest."

It was argued that "to foster sound economic conditions in such transportation and among such carriers in the public interest" we should consider general economic and unemployment conditions and sociological factors. There is no indication that the hours of service of employees, when regulated solely with a view to safety of operation, are affected either directly or indirectly by such factors. The provisions of section 202 evince a clear intent of Congress to limit our jurisdiction to regulating the motor carrier industry as a part of the transportation system of the nation. To extend that regulation to features which are not characteristic of transportation nor inherent in that industry strikes us as an enlargement of our jurisdiction unwarranted by any express or implied provision in the act, which vests in us all the powers we have.

24

The proceeding will be discontinued.

Commissioner ALLDREDGE concurs in the result.

ROGER, Commissioner, dissenting:

I am convinced that as a mater of law the Motor Carrier Act confers jurisdiction on this Commission over the hours of service of all employees of common and contract carriers in language which is so clear and unambiguous that it is not open to the construction give it in this proceeding.

I am authorized to state that Commissioner LEE concurs in this expression.

Commissioner AITCHISON did not participate in this proceeding.

25

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of May, A. D., 1939

Ex Parte MC-28

IN THE MATTER OF JURISDICTION OVER EMPLOYEES OF COMMON, CONTRACT, AND PRIVATE MOTOR CARRIERS UNDER SECTION 204 (A) OF THE MOTOR CARRIER ACT, 1935.

It appearing, That by order entered the 2nd day of November, A. D., 1938, the Commission instituted the above proceeding on its own motion, to determine the extent of its jurisdiction over employees of common, contract, and private motor carriers, under section 204 (a) of the Motor Carrier Act, 1935, and

It further appearing, That a full consideration of the question involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

26 *Exhibit B to complaint*

Before the Interstate Commerce Commission, Washington, D. C.

PETITION

For the exercise of jurisdiction, hearings, and regulations under Section 204 (a) (1) and (2) of Part II of the Interstate Commerce Act, to prescribe regulations covering qualifications and hours of service of employees, taking into consideration economic and competitive factors, and without limiting such regulations to matters concerning safety of operations.

* * * * *

Petitioners respectfully represent to the Commission:

That petitioner, American Trucking Associations, Inc., is a membership corporation under the laws of the District of Columbia, and that it is the n[illegible] organization of the trucking industry, and is owned by, an[illegible]ated on behalf of said industry, and maintains its general offices at 1013 Sixteenth Street NW., Washington, D. C. That many members of this Association, their names being too numerous to mention here, are engaged in the business of transporting property in interstate commerce by motor vehicle, and are thereby subject to the jurisdiction of the Commission, and to such rules and regulations as the Commission may prescribe under Section 204 (a) (1) and (2) of Part II of the Interstate Commerce Act.

That petitioner, Barnwell Brothers, Inc., is a corporation organized under the laws of the State of North Carolina, having its general offices on Hawkins Street, in Burlington, North Carolina. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from North Carolina to New York, both included, and by reason of such operations, petitioner is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 150 trucks, employs 380 employees, of which approximately one-half are truck drivers, and has an average annual pay roll of $500,000.

That petitioner, The Baltimore Transfer Company of Baltimore City, is a corporation organized under the laws of the State of Maryland, having its general offices at Monument Street and

Guilford Avenue, Baltimore, Maryland. It is engaged in the business of transporting, as a common carrier by motor
27 vehicle, general merchandise to, from, and between various points and places from New York City to Petersburg, Virginia, both included, and by reason of such operations, is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 150 motor vehicles, employs 285 employees, comprising 129 truck drivers, 84 helpers, 48 office workers, and 24 shopmen, and has an average annual pay roll of $400,000.

That petitioner, Brooks Transfer and Storage Company, is a corporation organized under the laws of the State of Virginia, having its headquarters and principal place of business at 1301 North Boulevard Street, Richmond, Virginia. It is engaged in the business of transporting, as a common carrier by motor vehicle, used household goods to, from, and between various points and places in all states East of the Mississippi River, and by reason of such operations, is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 65 vehicles, employs 100 employees, comprising 65 truck drivers and 35 clerical and other nondriving employees, and has an average annual pay roll of $125,000.

That petitioner, Brooks Transportation Company, is a corporation organized under the laws of the State of Virginia, having its headquarters and principal place of business at 1301 North Boulevard Street, Richmond, Virginia. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from North Carolina to New York, both included, and by reason of such operations, it is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 99 trucks, employs 250 employees, comprising 125 truck drivers and 125 clerical, garage, and other nondriving employees, and has an average annual pay roll of approximately $350,000.

That petitioner, Horton Motor Lines, Inc., is a corporation organized under the laws of the State of North Carolina, having its general offices at 913 West Hill Street, Charlotte, North Carolina. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from Charlotte, N. C., to New York City, N. Y., and Pittsburgh, Pa., and by reason of such operations is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It employs
28 all classes of employees usual to motor carrier operations, including many employees whose duties are not related to safety of operations.

That there is need in the interest of the public and of the petitioners for the exercise by the Commission of its jurisdiction and judgment within the frame of the Motor Carrier Act to prescribe, now, and from time to time as need may be found, qualifications and maximum hours of service of all classes of employees, taking into consideration the economic and competitive factors affecting the industry, and other factors of general public interest and without limiting or restricting such rules or regulations to matters concerning safety of operations, as has heretofore been limited and provided by the Commission in proceedings in Dockets Ex Parte MC–2, Ex Parte MC–4, and Ex Parte MC–28, and reports and orders issued in connection therewith, and petitioners are ready, able, and willing to furnish competent and relevant evidence on each point.

That the need of further regulation prayed herein arises from the necessity for:

(1) The establishment of uniform regulations to supersede conflicting state laws and municipal regulations covering both qualifications and maximum hours of service of employees, excepting employees whose duties are related to safety of operations.

(2) The correlation of motor-carrier service with the service of other transportation agencies now exempt from the Fair Labor Standards Act, excepting employees whose duties are related to safety of operations.

(3) The prevention of unfair competitive practices within the industry due to unfair labor practices, excepting employees whose duties are related to safety of operations.

(4) The promotion of sound economic conditions in both carrier and public interest by providing suitable rules and regulations other than safety regulations, governing the handling of property by self-appointed gangs of so-called "public workers" which assume the right to take charge of the loading and unloading of vehicles at public stations, wharves, docks, and warehouses, and prevent the service from being performed by the regular employees of the carrier, and due to the fact that these "public workers" are without contracts for employment and the identity of the individual loaders being unknown, and not being ascertainable by the carrier, such practice results in loss and damage
29 to goods, and increases the operating expenses and loss and damage claims borne directly by the carriers, and indirectly by the public.

(5) The establishment of uniform rules and regulations in the public interest in connection with the handling of milk and foodstuffs to the end that such handling may not be done by persons suffering from communicable diseases.

Petitioners respectfully request the Commission to hold hearings or otherwise determine now, and from time to time, reason-

able regulations for the purposes enumerated herein below, and to put such reasonable regulations into effect covering the following subjects:

(a) Maximum hours of service of all classes of employees who are now subject to conflicting state laws and municipal regulations in the absence of federal regulations except employees whose duties are related to safety of operations.

(b) Maximum hours of service for all classes of employees, except those whose duties are related to safety of operations, and whose duties and hours are necessarily correlated in operations with the maximum hours of service applicable to other employees whose duties are related to safety regulations.

(c) Maximum hours of service for all classes of employees except those whose duties involve safety of operations, whose employment is related to transportation service performed in connection with any other transportation agency which is exempt from the Fair Labor Standards Act.

(d) Maximum hours of service for all classes of employees heretofore regulated under the provisions of the Code of Fair Competition for the trucking industry, promulgated under the National Industrial Recovery Act, except employees whose duties are related to safety of operations.

(e) Qualifications of employees handling milk and other foodstuffs, or working in or about places and vehicles where milk and unprotected foodstuffs are stored or transported, to prevent the employment of persons suffering from communicable diseases.

Petitioners pray the Commission:

(1) to exercise its jurisdiction with respect to the subject matters herein set forth, and to receive evidence in connection therewith;

(2) to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers, except employees whose duties are related to safety of operations;

(3) to disregard its report and order in Ex Parte MC–28.

Respectfully submitted.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
BARNWELL BROTHERS, INCORPORATED,
BROOKS TRANSFER AND STORAGE COMPANY,
BROOKS TRANSPORTATION COMPANY,
THE BALTIMORE TRANSFER CO. OF BALTIMORE CITY,
HORTON MOTOR LINES, INC.,

By J. NINIAN BEALL, *Attorney for Petitioners.*

Dated at 1013 16th St. NW., Washington, D. C., June 9, 1939.

31 *Exhibit C to complaint*

Interstate Commerce Commission

No. MC C-139

QUALIFICATIONS AND HOURS OF SERVICE FOR MOTOR CARRIER EMPLOYEES

Submitted June 9, 1939. Decided June 15, 1939

Petition to Prescribe Qualifications and Maximum Hours of Service for Employees of Motor Carriers Whose Activities do not Affect Safety of Operation—Denied for Lack of Power

J. Ninian Beall for petitioners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By order dated November 2, 1938, we instituted on our own motion a proceeding known as Ex Parte No. MC-28 for the purpose of determining the extent of our power under section 204 (a) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle. We gave interested parties an opportunity to file briefs and heard them in oral argument.

Upon careful consideration, we issued a report in Ex Parte No. MC-28, dated May 9, 1939, wherein we reached the conclusion for reasons therein fully stated that our power under section 204 (a) (1), (2), and (3) of the Motor Carrier Act, 1935, is limited to prescribing maximum hours of service for employees whose activities affect the safety of operation.

Under date of June 9, 1939, the American Trucking Associations, Inc., Barnwell Bros., Inc., Brooks Transfer & Storage Company, Brooks Transportation Company, The Baltimore Transfer Company of Baltimore City, and Horton Motor Lines, Inc., filed a petition requesting us to hold hearings and prescribe maximum hours of service for employees of motor carriers subject to the act whose duties in no way affect the safety of operation of motor vehicles.

For the reasons fully set forth in our report of May 9, 1939, in Ex Parte No. MC-28, which is hereby referred to and made a part of hereof, we find that section 204 (a) of the Motor Carrier Act, 1935, does not empower us to prescribe maximum hours of

service for employees of motor carriers whose activities do not affect the safety of operation. Because of this lack of power it would be futile to hold hearings as requested by the petition, and the petition is denied. An order to that effect will be entered.

Commissioners LEE and ROGERS dissent.

Commissioner AITCHISON being necessarily absent did not participate in the disposition of this proceeding.

32 ORDER

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 15th day of June A. D. 1939.

No. MC C–139

QUALIFICATIONS AND HOURS OF SERVICE FOR MOTOR CARRIER EMPLOYEES

It appearing, That on June 9, 1939, the American Trucking Associations, Inc., et al., filed a petition asking that the Commission prescribe maximum hours of service for motor carrier employees whose activities do not affect the safety of operation of motor vehicles, and

It further appearing, That a full consideration of the matters involved has been had and that the Commission under date hereof has made and filed a report containing its conclusions thereon which said report is hereby referred to and made a part hereof;

It is ordered, That the petition be, and it is hereby, denied.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

33 In United States District Court

Answer of Interstate Commerce Commission

Filed June 28, 1939

* * * * *

The Interstate Commerce Commission, defendant in the above-entitled cause, for its answer to the complaint herein, says:

I

Answering paragraphs 1 to 6, inclusive, and paragraphs 8 to 11, inclusive, of the complaint, the Commission, for the purposes of this suit, and for none other, admits that the allegations in said paragraphs contained are true.

II

Answering paragraph 7 of the complaint, the Commission admits that on or about June 15, 1939, it issued a report and order in a proceeding before it entitled MCC 139, denying the prayer of a certain petition filed by the plaintiffs, which petition is attached to the complaint as Exhibit B thereto, but the Commission denies that said paragraph 7 contains a full or correct statement of the basis for the Commission's report and order or for its conclusions therein, and respectfully refers the court to said report and order in MCC 139, true copies of which are attached to the
34 complaint herein as Exhibit C; and the Commission further denies that it was and is vested with power to establish requirements, or to prescribe qualifications and maximum hours of service of employees of motor carriers whose duties have no relation to safety of operation of motor vehicles, and the Commission further denies all other allegations in said paragraph 7 contained.

III

Further answering the complaint, and particularly paragraph 12 thereof, the Commission admits and alleges that the plaintiffs herein, on or about June 9, 1939, filed with it a complaint or petition which the Commission received, and upon the basis of which it instituted its proceeding No. MCC 139, Qualifications and Hours of Service for Motor Carriers, a true copy of which petition is attached as Exhibit B to the complaint herein; that its report and order, attached to the complaint as Exhibit C, were made and entered in said proceeding. That the plaintiff's petition, among other things, sought to have the Commission establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers except employees whose duties are related to safety of operations (the Commission having, as alleged in said complaint, already established reasonable requirements with respect to qualifications and maximum hours of service for employees whose duties are related to safety of operatic That the Commission gave consideration to said petition, is the result of such consideration, made its report and order of June 15, 1939, which are attached to the complaint as Exhibit C, which report and order, together with the Commission's report in the proceeding entitled MC-28 and attached to the complaint as Exhibit A, included the Commission's decision and conclusions in the premises; that its findings and conclusions stated in said reports were and are, and that each of them was and is, fully justified by the facts stated in said petition and the law; that prior to the

making of its decision and findings the plaintiffs submitted the determination of the issues raised by its said petition to the Commission, and the Commission alleges that its said decision and order of June 15, 1939, were not made either arbitrarily or unjustly and contrary to the law; that in making said decision and order the Commission did not violate the law or exceed its
35 authority, and it denies each of and all the allegations to the contrary contained in the complaint herein.

IV

Answering paragraph 13 of the complaint, the Commission, for the purposes of this suit, and for none other, admits that the facts therein stated are true, except that the Commission denies that its decision and order of June 15, 1939, in MCC 139 will cause irreparable loss or damage to the plaintiff or any legal loss or damage.

Further answering the complaint, except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint in so far as they conflict either with the allegations herein or with the statements or conclusions set out in the Commission's said report of June 15, 1939.

Wherefore, having fully answered, the Commission prays that the complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By NELSON THOMAS, *Its Attorney.*

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

[*Duly sworn to by Marion M. Caskie; jurat omitted in printing.*]

36 In United States District Court

Answer of United States of America

Filed July 18, 1939

* * * * *

I

The defendant, United States of America, for the purposes of this suit and for no other, admits the allegations of the bill of complaint contained in paragraphs 1 to 6, inclusive, and paragraphs 8 to 10, inclusive; denies the allegations contained in paragraph 12.

II

Answering the allegations of paragraph 13 of the complaint, defendant denies that the Interstate Commerce Commission's order of June 15, 1939, in MC C-139 will cause irreparable damage to the plaintiff or any legal injury. The allegations of subparagraps (a), (b), (c), (d), (e), (f), and (g) of said paragraph are admitted for the purposes of this suit, and for none other, except that defendant denies that the conditions and circumstances stated in such subparagraphs are or will be, either in contemplation of law or in fact, the result of the Commission's order of June 15, 1939.

III

Answering paragraphs 7 and 11 of the complaint and further answering paragraphs 12 and 13 thereof, defendant admits and alleges that the plaintiffs herein on or about June 9, 1939, filed with the Commission a complaint or petition which the Commission received and upon the basis of which it instituted its proceeding No. MC C-139. Qualifications and Hours of Serv-
37 ice for Motor Carriers, a true copy of which petition is attached as Exhibit B to the complaint; that its report and order dated June 15, 1939, copies of which are attached to the complaint as Exhibit C were made and entered in said proceedings. Defendant alleges that the findings and conclusions stated in said report were and are, and each of them was and is, fully justified by the facts stated in said petition and the law that such report and order were not made arbitrarily or unjustly or contrary to the law; that in making said decision and order the Commission did not violate the law or exceed its authority, and defendant denies each and all the allegations to the contrary contained in the complaint herein.

IV

Except as herein expressly admitted, defendant denies the truth of each and all the allegations contained in the complaint insofar as they conflict either with the allegations herein or with the statements or conclusions set out in the Commission's said report of June 15, 1939.

FRANK COLEMAN,
Special Assistant to the Attorney General.

ELMER B. COLLINS,
Special Assistant to the Attorney General.

THURMAN ARNOLD,
Assistant Attorney General.

DAVID A. PINE,
United States Attorney.

38 In United States District Court

Motion for judgment

Filed August 2, 1939

* * * * *

Come now the plaintiffs, by their attorneys, and move the Court to enter a judgment upon the pleadings for the relief sought, and, in support thereof, say that:

1. The several answers of the defendants do not present a legally sufficient defense to the complaint.

2. The several answers of the defendants do not raise an issue as to any material fact.

3. The several answers of the defendants contain only conclusions and argument.

4. The plaintiffs are entitled to a judgment as a matter of law.

J. NINIAN BEALL,
ALBERT F. BEASLEY,
Attorneys for Plaintiffs.

39 In United States District Court

Motion for leave to intervene as a party defendant

Filed September 9, 1939

* * * * *

Elmer F. Andrews, Administrator of the Wage and Hour Division of the United States Department of Labor, moves for leave to intervene as a party defendant in this action for the purpose of asserting and maintaining the defenses set forth in his proposed answer, a copy of which is hereto attached as Exhibit "A," on the following grounds:

1. Petitioner is directly and solely responsible for the administration of the minimum wage and maximum hour provisions of the Fair Labor Standards Act.

2. Any determination of the jurisdiction of the Interstate Commerce Commission over employees of motor carriers under Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, will directly affect the application of the Fair Labor Standards Act to such employees in view of Section 13 (b) of the said Fair Labor Standards Act, which provides that, "The provisions of Section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish

qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935."

3. The basic issue involved in this action is whether certain large and important classes of employees of common and contract motor carriers are subject to the jurisdiction of the Interstate Commerce Commission under Section 204 (a) (1) and (2) of the Motor Carrier Act, or are subject to the maximum hour provisions prescribed by section 7 (a) of the Fair Labor Standards Act.

40 For the foregoing reasons petitioner has an interest in this action and seeks to assert defenses to the plaintiffs' claims presenting both questions of law and of fact which are common to the main action.

Wherefore, petitioner prays that he be allowed to intervene in the above-entitled cause as a party defendant, that he be allowed to file Exhibit "A" as an answer herein.

GEORGE A. MCNULTY,
General Counsel,
IRVING J. LEVY,
Assistant General Counsel,
JOSEPH RAUH,
Assistant General Counsel,
Attorneys for Petitioner, Elmer F. Andrews.

JOHN SKILLING,
Senior Attorney,
THOMAS H. TONGUE,
Assistant Attorney,
Of Counsel.

41 In United States District Court

Order granting leave to intervene, &c.

Filed September 9, 1939

On this 9th day of September 1939, comes now to be heard the petition of Elmer F. Andrews, Administrator of the Wage and Hour Division of the United States Department of Labor, for an order granting him leave to intervene in the above-entitled cause as a party defendant, and the plaintiffs and defendants having consented to the granting of the following order, it is

Ordered, adjudged, and decreed that said Elmer F. Andrews, be and hereby is granted leave to intervene in said cause as a party defendant and to file Exhibit "A" as an answer herein.

It is further ordered, adjudged, and decreed that plaintiffs' motion for judgment on the pleadings shall be considered as directed to intervenor's answer in addition to defendants' answers herein.

Dated September 9th, 1939.

(S.) JESSE C. ADKINS,
United States District Judge.

42 The American Trucking Association, Inc., Barnwell Brothers, Inc., Brooks Transfer and Storage Company, Brooks Transportation Company, The Baltimore Transfer Company of Baltimore City, Plaintiffs, consent to the entry of the foregoing order.

J. NIXIAN BEALL.
B.
ALBERT F. BEASLEY,
Attorneys for Plaintiffs.

The United States of America, defendant, consents to the entry of the foregoing order.

FRANK COLEMAN,
Special Assistant to the Attorney General.

The Interstate Commerce Commission, defendant, consents to the entry of the foregoing order.

DANIEL W. KNOWLTON,
Chief Counsel.

43 In United States District Court

[Title omitted.]

Answer of intervener

Filed September 9, 1939

For answer to the complaint in the above-mentioned cause, Elmer F. Andrews, Administrator of the Wage and Hour Division of the United States Department of Labor, intervenes as defendant herein, and says:

I

Answering paragraphs 1 to and including 6 of the complaint, intervener admits the facts alleged therein for the purposes of this suit.

II

Answering paragraph 7 of the complaint, intervener admits that an order was issued by the Interstate Commerce Commission

on or about June 15, 1939, in its proceeding entitled No. MC C–139, but denies that the Commission was vested with power to prescribe maximum hours of service for employees whose duties have no relation to safety of operation of motor carriers, and denies that said order is invalid either for the reasons alleged in paragraph 7, or for any other reasof, and further denies all other allegations in said paragraph 7.

III

Answering paragraphs 8 to and including 10, intervener admits the facts alleged therein for the purposes of this suit.

IV

Answering paragraph 11, intervener admits that plaintiffs filed a petition with the Interstate Commerce Commission praying
44 that the said Commission prescribe qualifications and maximum hours of service for employees of common and contract motor carriers whose duties do not affect the safety of operation of motor vehicles, and that the said Commission denied said petititon in MC C–139 upon the ground that it lacked the power to prescribe the regulations sought.

V

Answering paragraph 12, intervener denies the allegations therein and denies particularly that the said Commission in MC C–139 arbitrarily and capriciously refused to hold a hearing, receive testimony or consider the merits of the case, as alleged by plaintiffs in subparagraph (e), and intervener further alleges that the basic issue involved in MC C–139 was the same as that determined in Ex Parte No. MC–28 in which the said Commission held that it had no jurisdiction over employees of common and contract carriers whose duties do not affect safety of operation; that the decision in Ex Parte No. MC–28 was reached only after considering at least twenty briefs from motor carriers, labor organizations, and other interested parties, hearing oral argument by twelve attorneys representing these interests, and giving full and careful study to all questions of law involved in that proceeding; that the facts pertinent to the formulation of proper regulations concerning the qualifications and maximum hours of employees of common and contract motor carriers were fully considered by the Interstate Commerce Commission in Ex Parte No. MC–2, in the course of which hearings were held in seven cities

throughout the United States from November 19, 1936, to December 2, 1938, filling twelve volumes of records, and in Ex Parte No. MC–4 in the course of which hearings were held in nine cities from September 16, 1936, to February 18, 1939, filling eight volume of records.

VI

Answering paragraph 13, intervener admits that the plaintiffs would be required to comply with the provisions of the Fair Labor Standards Act, but denies that the requirements of the Fair Labor Standards Act would make it impossible for the plaintiffs to render adequate public service or that they would suffer irreparable damage as a result thereof. Intervener further denies that plaintiffs are, and will be, subject to claims of abrogation of existing labor agreements with resulting labor controversies and the risk of strikes and disruption of service, and asserts that the provisions of the Fair Labor Standards Act do not abrogate existing labor agreements.

VII

Further answering the complaint, except as herein expressly admitted, intervener denies the truth of each and every allegation contained in the complaint, insofar as they conflict either with the allegations herein or with the statements or conclusions set out in the Commission's said report of June 15, 1939, and insofar as they conflict with the jurisdiction of the Fair Labor Standards Act over employees of common and contract motor carriers whose duties do not affect the safety of operation of such carriers.

Wherefore, intervener prays judgment that the complaint of the plaintiffs be dismissed.

GEORGE A. MCNULTY,
General Counsel,
IRVING J. LEVY,
Assistant General Counsel,
JOSEPH RAUH,
Assistant General Counsel,
Attorneys for Intervener Elmer F. Andrews.

JOHN SKILLING,
Senior Attorney,
THOMAS H. TONGUE,
Assistant Attorney,
Of Counsel.

46 In United States Court of Appeals for the District of Columbia

[Title omitted.]

Order designating three-judge court

Filed September 23, 1939

Upon the request of Honorable Jennings Bailey, Associate Justice of the District Court of the United States for the District of Columbia, to whom application has been presented in the above-entitled cause for a writ of mandatory injunction (pursuant to the provisons of Sec. 205 (b) of the Motor Carrier Act, 1935; 49 U. S. C. A. Sec. 305 (h)) to require the defendant, Interstate Commerce Commission, to take jurisdiction of plaintiff's petition in a matter before the Commission entitled "MC C–139," in which the Commission is alleged to have issued a negative order solely because of a supposed lack of power, I hereby designate D. Lawrence Groner, Chief Justice of the United States Court of Appeals for the District of Columbia, and F. Dickinson Letts, Associate Justice of the District Court of the United States for the District of Columbia, to participate with Justice Bailey as a three-judge statutory court in hearing and determining such application.

Dated September 23, 1939.

(Signed) D. Lawrence Groner,
Chief Justice.

47 In United States District Court

Decree

Filed January 24, 1940

* * * * *

This cause coming on to be heard upon the motion of the plaintiffs for judgment upon the pleadings, and counsel for the respective defendants appearing and stating that the matter should be considered upon the pleadings as being submitted upon final hearing, and the matter having been fully argued by counsel for the respective parties, it is, upon consideration thereof, this 24th day of January 1940, by the Court,

Adjudged, ordered, and decreed, that:

1. The order entered June 15, 1939, by the Interstate Commerce Commission in the proceeding entitled "MC C–139" is illegal and

void; and that the same be, and it hereby is, set aside, and held for naug t.

2. Th Interstate Commerce Commission is invested with jurisdiction nd power, under Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle.

48 3. In the matter of the jurisdiction and power of the Interstate Commerce Commission to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle, the Interstate Commerce Commission be, and it hereby is, required and directed to take jurisdiction, upon the plaintiffs' petition in said MC C–139, in conformance with the opinion of this Court duly filed herein as part of the record hereof.

(S.) D. LAWRENCE GRONER,
C. J., U. S. Ct. of Apps., Presiding.
(S.) JENNINGS BAILEY,
J., U. S. Dist. Ct.
Dissenting:
(S.) F. DICKINSON LETTS,
J., U. S. Dist. Ct.

49 In United States District Court

Order substituting Harold D. Jacobs as intervener

Filed February 5, 1940

* * * * *

Thomas H. Tongue, one of the attorneys for the intervener, having appeared before the Court this day, and having informed the Court that the intervener, Elmer F. Andrews, resigned from the office of Administrator, Wage and Hour Division, United States Department of Labor, during the pendency of this action which relates to the present and future discharge of the official duties of said Administrator, and that subsequently the President of the United States appointed Harold D. Jacobs to said office, in compliance with Section 4 (a) of the Fair Labor Standards Act, and said attorney having further represented to this Court, and it appearing to the Court that there is a substantial need for the continuing and maintaining of the intervention by the said Harold D. Jacobs, as successor in office to the said Elmer F.
50 Andrews, and counsel for the plaintiffs and counsel for the defendants having consented to substitution of the said

Harold D. Jacobs for the said Elmer F. Andrews, by subscribing their names to this Order, therefore, pursuant to U. S. C., Title 28, sec. 780, and Rule 25 (d) of the Rules of Civil Procedure for District Courts of the United States, it is

Ordered, adjudged, and decreed that the said Harold D. Jacobs, Administrator, Wage and Hour Division, United States Department of Labor, be and he is substituted for the said Elmer F. Andrews, as intervener herein.

It is further ordered, adjudged, and decreed that the said cause may be continued and maintained by the said Harold D. Jacobs.

Dated, February 5th, 1940.

JENNINGS BAILEY,
J., U. S. District Court.

Consented to:

J. NINIAN BEALL.
B.
ALBERT F. BEASLEY.
Attorneys for Plaintiffs.
FRANK COLEMAN,
Special Assistant to the Attorney-General,
Attorney for Defendant,
United States of America.
NELSON THOMAS.
Attorney for Defendant,
Interstate Commerce Commission.

51 In United States District Court

[Title omitted.]

Petition for appeal

Filed February 5, 1940

To the Honorable Justices of the District Court for the District of Columbia:

The United States of America, the Interstate Commerce Commission, and Harold D. Jacobs, Successor in office to Elmer F. Andrews, Wage and Hour Division, Department of Labor, Intervenor, defendants in the above-entitled case, feeling themselves aggrieved by the final decree entered by this Court on January 24, 1940, pray an appeal from said decree to the Supreme Court of the United States, in accordance with the statutory requirements.

The particulars wherein they consider the decree erroneous are set forth in the assignment of errors, accompanying this petition, and to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings, and papers on which such decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States. Dated January 31, 1940.

DAVID A. PINE,
United States Attorney,
THURMAN ARNOLD,
Assistant Attorney General,
52 ELMER B. COLLINS,
FRANK COLEMAN,
Special Assistants to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
Chief Counsel,
NELSON THOMAS,
Attorney,
For the Interstate Commerce Commission.
GEORGE A. MCNULTY,
General Counsel,
Wage & Hour Division, Department of Labor,
For Harold D. Jacobs, successor in office to
Elmer F. Andrews, Administrator.

53 In United States District Court

Assignment of errors

Filed February 5, 1940

Now come the United States, the Interstate Commerce Commission, and Harold D. Jacobs, successor in office of Elmer F. Andrews, Administrator, Wage and Hour Division of the Department of Labor, Intervener, defendants in the above-entitled cause, by their respective counsel and in connection with their appeal, file the following assignment of errors upon which they will rely in the prosecution of their appeal to the Supreme Court of the United States from the final decree of this Court entered January 1940.

The District Court erred:

(1) In holding that the order entered June 15, 1939, by the Interstate Commerce Commission in the proceeding entitled "MC C–139" is illegal and void and in setting the order aside.

(2) In holding that the Commission is invested with jurisdiction and power, under Section 204 (a) (1) (2) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect

to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicles; and in
54–59 failing to hold, on the contrary, that the jurisdiction and power of the Commission under these sections of the Motor Carrier Act, 1935, is limited to those employees whose activities affect safety of operation.

(3) In requiring and directing the Commission to take jurisdiction, upon the plaintiffs' petition, the said MC C–139, in conformance with the opinion of the Court.

(4) In failing to dismiss the bill of complaint.

THURMAN ARNOLD,
Assistant Attorney General,
DAVID A. PINE,
United States Attorney,
ELMER B. COLLINS,
FRANK COLEMAN,
Special Assistants to the Attorney General.
DANIEL W. KNOWLTON,
Chief Counsel,
NELSON THOMAS,
Attorney,
For the Interstate Commerce Commision.
GEORGE A. MCNULTY,
General Counsel, Wage & Hour Division, Department of Labor, for Harold D. Jacobs, Successor in office of Elmer F. Andrews, Administrator.

Dated January —, 1940.

60 In United States District Court

Opinion on petition for mandatory injunction

Filed February 5, 1940.

* * * * *

Before GRONER, Chief Judge, United States Court of Appeals, and BAILEY and LETTS, U. S. District Judges.

* * * * *

The main question we have to answer is whether defendant, Interstate Commerce Commission, has jurisdiction and power under section 204 (a) (1) and (2) of the Motor Carrier Act of 1935[1] to establish reasonable requirements with respect to qualifi-

[1] 49 Stat. 543, 49 U. S. C. A. 301, et seq.; 107A F. C. A., Tit. 49, Sec. 301, et seq.

cations and maximum hours of service for all employees of common and contract carriers by motor vehicle.

Plaintiff, American Trucking Associations, Inc., is an organization of motor carriers subject to regulation under the Act, and its principal place of business is in the District of Columbia. The other plaintiffs are common carriers by motor vehicle in interstate commerce, likewise subject to regulation.

The Motor Carrier Act, which in Part II of the Interstate Commerce Act,[2] contains a declaration of policy, as follows:

"SECTION 202 (a). It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense, and cooperate with the several states and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part."

61

The duties and powers of the Commission are described in Sec. 204 (a):

"(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the

[2] 49 U. S. C. A. 1, et seq., 10A F. C. A., Tit. 49, secs. 1, et seq.

term 'motor carrier' shall be construed to include private carriers of property by motor vehicle in the administration of sections 204 (d) and (e), 205, 220, 221, 222 (a), (b), (d), (f), and (g), and 224 of this part."

Shortly after the passage of the Act, the Commission established qualifications and maximum hours for drivers of motor vehicles operated by common and contract carriers.[3] It left undecided the extent of its jurisdiction over other employees. Subsequently, and after the passage in 1938 of the Fair Labor Standards Act,[4] the Commission again instituted proceedings to determine the previously undetermined extent of its jurisdiction. It concluded that its power over employees was limited to the promotion of safe operation, in consequence of which it had jurisdiction to establish hours of work and qualifications of drivers, but of no other employees.[5]

Plaintiffs filed their petition June 9, 1939, asking the Commission to hear evidence and establish regulations as to all employees. The Commission declined to do so, adhered to its former ruling, and declared that any further consideration would be futile, since it had no power to do the things asked. This action was then begun against the United States and the Commission. The Administrator of the Wage and Hour Division was allowed to intervene.

Jurisdiction of the court is conceded. Sec. 205 (h) of the Motor Carrier Act; Int. Com. Com. v. Humboldt Steamship Co., 224 U. S. 474; Louisville Cement Co. v. Int. Com. Comm., 246 U. S. 638; Kansas City So. Ry. v. Int. Com. Comm., 252 U. S. 178.

At the hearing counsel stated that, if the Act be construed as plaintiffs insist, the Commission will have to prescribe qualifications and hours for stenographers, clerks, accountants, me-
62 chanics, solicitors, and other employees of whose duties and qualifications it has no special knowledge; in this function its determination would not be based upon considerations of transportation—on which it is held to be expert—but upon social and economic considerations, matters on which it is not qualified or equipped, and which would entail the performance of a duty wholly foreign to its normal activities. But even if this be granted, we think there is no doubt that Congress had the power to impose the challenged duty. And the answer to the query cannot be found in the fact of inconvenience to the Commission,[6] but must be first looked for in the language of the statute. If the words are clear, there is no room for construction.

[3] Ex Parte MC-2, 3 M. C. C. 665, 690, 6 M. C. C. 557, 11 M. C. C. 203.
[4] 52 Stat. 1060.
[5] Ex Parte MC-28, 13 M. C. C.——.
[6] U. S. ex rel. Kansas City Sou. R. Co. v. I. C. C., 252 U. S. 178.

"To search elsewhere for a meaning either beyond or short of that which they disclose is to invite the danger, in the one case, of converting what was meant to be open and precise, into a concealed trap for the unsuspecting, or, in the other, of relieving from the grasp of the statute some whom the Legislature definitely meant to include." Van Camp & Sons Co. v. American Can Co., 278 U. S. 245, 253.

This rule has been applied even where the literal meaning leads to a hard or unexpected result. Crooks v. Harrelson, 282 U. S. 55, 60; Armstrong Paint & Varnish Works v. Nu-Enamel Co., 305 U. S. 315, 333. Statutes have been annulled by construction only when the effect of giving the words their clear meaning would "offend the moral sense, involve injustice, oppression, or absurdity." U. S. v. Goldenberg, 168 U. S. 95, 103; Van Camp & Sons Co. v. American Can Co., 278 U. S. 245, 253–4.

Guided by this rule, we find that Congress in the first section of the Act declared the definite policy to regulate motor transportation (1) so as to foster sound economic conditions in the public interest; (2) to promote adequate, economical, and efficient service, and reasonable charges; (3) to prevent unjust discriminations, undue preferences or advantages; (4) to avoid destructive competition; (5) to coordinate transportation by motor carriers and other carriers; (6) to develop and preserve a highway transportation system adapted to the needs of commerce and the national defense. The stated objects demonstrate beyond question that Congress has preempted the entire field. To the achievement of the ends sought, Congress provided that it should be the duty of the Commission to regulate carriers by establishing reasonable requirements with respect to (a) service, (b) transportation of baggage and express; (c) uniform systems of accounts, records, and reports; (d) qualifications and maximum hours of service of employees; (e) safety of operation and equipment.

In (d) the word "employees" is inclusive. There is nothing in its use or in its relation to other words in the section which, considered in the ordinary sense, can be said to indicate only a particular class of employees. If Congress had intended to distinguish between those employees engaged in the actual operation of motor vehicles and those engaged in other work, it could have done so, as it did in a former statute,[7] by the addition of less than half a dozen words. Hence, to read that limitation into the section would be not only to disregard the letter of the law, but to find, without guide or compass in the Act, a legislative intent to that end. To the contrary, such guide as there is—

[7] In the Hours of Service Act, 34 Stat. 1415, 45 U. S. C. 61, Congress by definition limited the word "employees" to "persons actually engaged in or connected with the movement of any train."

outside the distinct and definite meaning of the words—supports the view that Congress used the language of the section advisedly, and meant precisely what it said. For the third paragraph of Sec. 204, which concerns *private* carriers, expressly limits the power of the Commission over qualifications and hours to those employees whose work relates to safety of operation. This distinction between the two classes of carriers is convincing of a definite purpose, and the reason for it is obvious: private carriers are defined to be persons who transport for themselves—in furtherance of a commercial enterprise—or as
63 bailees, their own or another's property in interstate commerce.[8] As to such carriers, Congress properly concluded that to bring all their employees under the Commission's jurisdiction—as well as those engaged in the manufacturing or commercial end of the business, and having in themselves no direct relation to motor transportation—would create an anomalous situation, as it would.

Unless what has been said is incorrect, nothing remains except to ascertain whether, in giving effect to the words of the statute, we create a situation so "glaringly absurd" as to impel the conclusion Congress could not have intended such a result. With due deference to the dilemma of the Commission, we are unable to say that this is true. At the time of the passage of the statute, the Fair Labor Standards Act had not been passed or even considered by Congress, but there was in effect a law known as the "National Industrial Recovery Act,"[9] under which codes were established to regulate the hours of service of all classes of employees of motor carriers. The Motor Carrier Act expressly provided that it should supersede the provisions of the former codes.[10] There were also in effect in a majority of the states some sort of legislation covering, with diversity of detail and lack of uniformity, hours of service of employees, including drivers of motor vehicles. It is not unreasonable, in these circumstances, to assume that Congress, aware of the problem as it applied to interstate commerce and the advisability of uniformity, chose to place upon the Commission the details of its solution. Certainly, aside from the consumption of the Commission's time, there is nothing glaringly absurd in this, nor reason to suppose a better agency could be found for the purpose. The Commission's fear that it may be called upon to establish qualifications for executive

[8] Sec. 203 (a) (17). The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle," who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

[9] 48 Stat. 195, 15 U. S. C. A. 701, et seq., 4 F. C. A. Tit. 15, secs. 701, et seq.

[10] Sec. 204 (b), 49 U. S. C. A. 304 (b), 10A F. C. A., Tit. 49, Sec. 304 (b).

officials, solicitors, and lawyers, is overstrained. None of these classes is within the category of "employees" as that word is used in public service or labor legislation. The hearings before the committees of Congress developed that the percentage cost of labor was equal to nearly half the total gross revenue of motor carriers, and the special attention of Congress was directed by representatives of the unions to the labor aspect as applied to the problems of uniformity and stabilization, because of widely diversified business organization, absence of labor organization in some regions; and the claimed unreasonable practices of many operators.

And it is easy to see that stabilization of labor conditions as applied to this industry is an important, and indeed a necessary, part of the establishment of rates and general business regulation, matters as to which the Commission admittedly is expert, and these objectives appear as part and parcel of the purposes of the legislation. In this aspect, it is reasonable to conclude that Congress had them in mind when later, upon the passage of the Fair Labor Standards Act, it provided specifically that Sec. 7 thereof [11]—which establishes maximum hours of service—should not apply "with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935, or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act." The necessity of separate provisions for the exemption of employees of the two classes of carriers is manifest. There are no private carriers by rail subject to the Commission's jurisdiction. Congress, therefore, used inclusive language as to the employees of railroads. There are, however, many private motor carriers who are subject to a limited regulation by the Commission, and this is true for reasons which we have already explained. Their employees not subject to the jurisdiction of the Commission would, by the use of the language employed in the case of railroads, have been left outside of the provisions of the Fair Labor Standards Act. It was obviously the recognition of this fact alone that induced the use of different language in each instance.

64 In the view we take, the language of the disputed section is so plain as to permit only one interpretation, and we find nothing in the Act as a whole which can with any assurance be said to lead to a different result. The circumstances under which the section was placed in the bill may possibly have created a situation not contemplated by its sponsors, but to say

[11] 29 U. S. C. A. 207, 9 F. C. A., Tit. 29, Sec. 207.

that this is true would be pure speculation, in which we have no right to indulge, and upon which we can base no conclusion. We are, therefore, obliged to hold that the Commission was mistaken in limiting its powers to the drivers of trucks and buses.

A secondary question remains to be discussed. The intervener says that, if the statute be read literally, it is unconstitutional because it lacks the necessary legislative standard of qualifications or of service hours for application by the Commission. The rule announced in Panama Refining Co. v. Ryan, 293 U. S. 388, is cited to sustain this contention. But we think the standard established in the Act sufficient to escape the condemnation of the rule applied in that case. Even there the Supreme Court was careful to point out that legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution, the Court said, has never been regarded as denying to Congress the necessary resources of flexibility and practicality which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits.

Prior to the passage of the Motor Carrier Act, regulation of employees of motor carriers had been exhaustively dealt with under the N. I. R. A. codes, and there had been about two years of experience in operating under these codes. There were also the standards set up by the states, and there was the express provision in the statute that the Commission should, in setting up the new order, establish only reasonable requirements. The Commission itself found in this delegation a sufficient criterion to enable it to establish qualifications and hours of service for employees in the safety of operation. Why, then, are the standards inadequate when applied to the congressional mandate to secure safety of equipment, efficient service, reasonable rates, and economic soundness? In this respect, the Act is not different from that vesting powers in the Commission in relation to railroads, and the latter powers have invariably been sustained. Adequate legislative standards have been found in such general terms as "Public interest" and "reasonable rates," etc. In such cases the public need was a sufficient standard, and the detail involved required a flexibility inherent in administration by the Commission. Avent v. U. S., 266 U. S. 127; Intermountain Rate Cases, 234 U. S. 476; I. C. C. v. Goodrich T. Co., 224 U. S. 194; St. Louis, I. & S. Co. v. Taylor, 210 U. S. 281; New York Central Securities Corp. v. U. S., 287 U. S. 12. These cases have turned upon the right of Congress to delegate powers to the Commission to promote sound economic conditions, and efficient public service.

In the Motor Carrier Act Congress has extended the power to working hours. Unquestionably, a limit might have been set, as in the Fair Labor Standards Act. But it is clear that rigidity was not practical in motor carrier transportation, and this fact is recognized by the Commission in a report in one of the ex parte proceedings to which we have referred.

Congress, therefore, vested discretion to apply limits in the situations to be developed in hearings under Sec. 225 of the Act. We see no reason to doubt that reasonable requirements with respect to maximum hours of service is quite as definite as "reasonable rates." See Trustees of Saratoga Springs v. Saratoga Electric Light & Power Co., 191 N. Y. 123, 83 N. E. 693; Interstate Com. Commission v. Railway Co., 167 U. S. 479, 494. It is also apparent that Congress inteinded the Commission to avail of the experience and knowledge of other bureaus of the government, for authority to this end is provided in Sec. 225.[12]

65 This, as it seems to us, is just another instance where Congress has expressed a policy, prescribed a standard, and left to the Commission the duty of applying the policy and the standard to the facts of differing situations. Hampton & Co. v. United States, 276 U. S. 394.

We, therefore, think the Commission was in error in denying jurisdiction, and that an order should be made requiring it to consider plaintiffs' petition in accordance with the views expressed in this opinion.

(Signed) D. Lawrence Groner.
(Signed) Jennings Bailey.

December 4, 1939.

Dissenting opinion

Letts, J., dissenting: I concede that a literal construction of the statute leads to the result announced in the court's opinion, but I am not prepared to agree that Congress intended the result. The reason of the law should prevail over its letter. Sorrells v. United States, 287 U. S. 435.

The provisions of section 202 of the Motor Carrier Act evince the clear intent of Congress to limit the jurisdiction of the Commission to regulating the motor carrier industry as a part of the trans-

[12] The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter.

portation system of the nation. The literal construction which the court has given the Act extends the regulation to factors which are not characteristic of transportation, or inherent in the industry. It would seem to enlarge the jurisdiction of the Commission and extend it beyond the Congressional grant of power. Section 202 (a) provides in part as follows:

"It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest."

Congress was confronted with a situation which demanded a practical solution. Casualties on the road had become countless. The legislative history seems to evidence a purpose to effect safety of operation. Congress was aware that many states had enacted statutes prescribing maximum hours of service for drivers of motor vehicles operated in intrastate commerce. Of the forty-three states in which such statutes are found none has dealt with maximum hours of other employees. In such state statutes there was a lack of uniformity which operated against the public interest. By the enactment of the Motor Carrier Act Congress sought to conform such regulations. By the enactment the lack of uniformity in the detail of such statutes was overcome so far as the regulations related to interstate commerce either directly or indirectly. It has often been said by the Supreme Court that uniformity of regulation is one of the purposes of the commerce clause of the Constitution. Noncompliance with a Federal law will not be excused because it is at variance with a state statute. Congress in the enactment of the Motor Carrier Act exercised its power to insure uniformity of regulation as against the influence of conflicting and discriminating state legislation in relation to interstate commerce.

The known and grave increase in casualties and the need of conformity of regulation required serious thought and prompt Congressional action. The remedy which Congress afforded had direct relation to the evils of which it was aware and which it sought to cure. I find nothing in the legislative history which indicates that Congress in its consideration of this act gave thought to sociological problems or economic considerations beyond those naturally incident to safety of operation in interstate com-
66 merce. The history of the legislation does not reveal any legislative concern about unemployment or other related social and economic problems which would have been of prime importance if Congress had undertaken to regulate all employees.

including those whose duties or service have no relation to safety of operation. The inclusive language here considered was not placed in the bill by the legislative committees. Nor was it considered by the committees or discussed by any witness at any hearing. It was placed in the bill by amendment offered on the floor of the Senate and accepted without debate. The amendment was not germane to the bill, and if given a literal interpretation produces an unexpected and unintended result. It would extend the jurisdiction of the Commission to social problems, which Congress had no thought of doing.

This view is not inconsistent with, but in recognition of the Commission's power to prescribe qualifications and hours of service for all such employees whose duties relate to safety of operation. It should not be said as a matter of law that such jurisdiction extends to such classes of employees whose service has no relation to safety of operation. What classes of employees are to be so regulated is a mixed question of law and fact which will be decided in proper cases after hearings are held to determine the facts.

I am of opinion that to give the Act the broad construction which a literal meaning requires leads to an unreasonable result which is inconsistent with the intent of Congress. I conclude that this case falls within the group of cases controlled by the rule announced in the case of Ozawa v. United States, 260 U. S. 178, as follows:

"It is the duty of this court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment, and inquire into its antecedent history, and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail."

See also Sorrells v. United States, 287 U. S. 435. To hold otherwise requires that we find in the statute necessary standards to warrant the delegation of Congressional powers which a literal reading of the statute implies. I am unable to find standards in the language of the act which will protect it from assault on constitutional grounds. The absence of such standards negatives and rebuts the implication that Congress intended to extend the jurisdiction of the Commission.

(Signed) F. DICKINSON LETTS.

67 In United States District Court

Order allowing appeal

Filed February 5, 1940

* * * * * *

In the above-entitled cause, United States of America, Interstate Commerce Commission, and Harold D. Jacobs, Successor of Elmer F. Andrews, Wage and Hour Division, Department of Labor, Intervenor, defendants, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of this Court entered January 24, 1940, and having also made and filed an assignment of errors and a statement of jurisdiction and having in all respects conformed to the statutes and rules of court in such case made and provided, it is

Ordered and decreed that the appeal be, and the same is hereby, allowed as prayed for.

JENNINGS BAILEY,
United States District Judge.

Dated February 5th, 1940.

68 In United States District Court

Motion for stay pending appeal

Filed February 5, 1940

* * * * * *

Come now the United States and Interstate Commerce Commission, defendants in the above-entitled cause, and show:

(1) That pursuant to its decision and opinion (one judge dissenting) handed down December 4, 1939, this Court, on January 24th, 1940, made and entered its final order and decree in the above-styled case, wherein the defendant Interstate Commerce Commission was ordered and required to take jurisdiction of a certain complaint and application filed with it by the plaintiffs herein.

(2) That compliance with said order would probably require the Commission to hold a long hearing, with many witnesses and the expenditure of much time and effort by the diverse parties who are interested in the matters involved in said proceeding before the Commission.

69 (3) That the defendants desire to take an appeal to the Supreme Court of the United States from said order and decree, and have presented their prayer for appeal, assignment of errors, and other papers required by law in connection with such appeal.

(4) That in the event this Court's decree should ultimately be reversed by the Supreme Court, the time and effort expended by the Commission, and by the parties participating in the proceedings before the Commission, would be wasted.

(5) That the rights and interests of the plaintiffs would not be prejudiced by postponing action by the Commission in said proceeding before it until the Supreme Court has heard and decided said appeal.

Wherefore, these defendants pray that the operation of this Court's order and decree, in so far as it requires the Commission to proceed with the hearing in said proceeding before it, be stayed and postponed until final disposition of the case in the Supreme Court.

FRANK COLEMAN,
Special Assistant to the Attorney-General,
Attorney for defendant,
United States of America.
NELSON THOMAS,
Attorney for defendant,
Interstate Commerce Commission.

70 In United States District Court

Order of stay pending appeal

Filed February 5, 1940

* * * * *

In the above-entitled cause, the defendants, United States and Interstate Commerce Commission, having filed their motion for stay of the operation of the final decree herein, in so far as it requires action by the Commission in the proceeding before it, pending the determination by the Supreme Court of the appeal herein, and the said motion having been duly considered by the Court, it is

Ordered that the operation of this Court's order herein, entered January 24, 1940, in so far as it requires the Commission to hold a hearing in the proceeding referred to in said order, be,

and it is hereby, stayed and postponed until after final disposition of this case in the Supreme Court.

D. LAWRENCE GRONER,
C. J., U. S. C. A.,
United States Circuit Judge.
JENNINGS BAILEY,
United States District Judge.

Dated February 5th, 1940.

71 [Citation in usual form, showing service on Albert F. Beasley, filed Feb. 5, 1940, omitted in printing.]

74 In United States District Court

Praecipe for transcript of record

Filed February 5, 1940

* * * * *

To the CLERK:

You will please prepare a transcript of the record in the above-entitled use to be transmitted to the Supreme Court of the United States pursuant to the appeal to said Court heretofore filed and allowed, and incorporate in said transcript the following:

1. Bill of complaint and Exhibits A, B, and C thereto.
2. Answer of United States.
3. Answer of Interstate Commerce Commission.
4. Plaintiffs' motion for judgment.
5. Motion for leave to intervene of Elmer F. Andrews, Administrator.
6. Order allowing intervention of Elmer F. Andrews, Administrator.
7. Answer of Elmer F. Andrews, Administrator, intervenor.
8. Designation of Court.
9. Final decree.
10. Order allowing substitution of Harold D. Jacobs, Administrator.
11. Petition for appeal and assignment of errors.

75 12. Statement of jurisdiction of Supreme Court.

13. Order allowing appeal.
14. Motion for stay.
15. Order allowing stay.
16. Citation on appeal, and acknowledgment thereof.
17. Notice of appeal, attaching copies of the petition for appeal, order allowing appeal, assignment of errors and statement as to jurisdiction, and acknowledgment of service thereof.

18. Praecipe for transcript of record and acknowledgment thereof.

19. Clerk's certificate dated February 8, 1940.

THURMAN ARNOLD,
Assistant Attorney General,
DAVID A. PINE,
United States Attorney,
ELMER B. COLLINS,
FRANK COLEMAN,
Special Assistants to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
Chief Counsel,
NELSON THOMAS,
Attorney,
For the Interstate Commerce Commission.
GEORGE A. MCNULTY,
General Counsel,
Wage & Hour Division, Department of Labor,
For Harold D. Jacobs, successor in office
to Elmer F. Andrews, Administrator.

Service of the foregoing praecipe for transcript of record and the receipt of a copy thereof are hereby acknowledged this 5th day of February 1940. No additional portions of the record are desired to be incorporated into the transcript.

ALBERT F. BEASLEY,
Counsel for Plaintiffs.

76 [Clerk's certificate to foregoing transcript omitted in printing.]

77 In Supreme Court of the United States

Statement of points to be relied upon and designation of the record to be printed

Filed February 10, 1940

Come now the appellants and say that they will rely upon the points made in their assignment of errors in brief and oral argument before this Court on their appeal in the above entitled cause.

Appellants further state that the entire record in this cause as filed in this Court is necessary, and should be printed to enable the Court to consider the points set forth above.

February 9, 1940.

FRANCIS BIDDLE,
Solicitor General.
THURMAN ARNOLD,
Assistant Attorney General.
DAVID A. PINE,
United States Attorney.
ELMER B. COLLINS,
FRANK COLEMAN,
Special Assistants to the Attorney General.
For the United States of America.
DANIEL W. KNOWLTON,
Chief Counsel,
NELSON THOMAS,
Attorney.
For the Interstate Commerce Commission.
d GEORGE A. McNULTY,
General Counsel,
Wage & Hour Division, Department of Labor.
For Harold D. Jacobs, successor of
Elmer F. Andrews, Administrator.

Service of a copy of this Statement of Points and Designation of the Record to be printed is acknowledged this 5th day of February 1940.

ALBERT F. BEASLEY,
Counsel for Appellees.

e [File endorsement omitted.]

f [Endorsement on cover:] File No. 44120. District of Columbia, D. C. U. S. Term No. 713. The United States of America, Interstate Commerce Commission, et al., Appellants vs. The American Trucking Associations, Inc., et al. Filed February 9, 1940. Term No. 713 O. T. 1939.

U. S. GOVERNMENT PRINTING OFFICE 1940

No. 713

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLANTS

v.

THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

STATEMENT AS TO JURISDICTION

STATEMENT AS TO JURISDICTION ON APPEAL

Filed February 5, 1940

* * * * *

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States, the Interstate Commerce Commission, and Harold D. Jacobs, successor in office of Elmer F. Andrews, Administrator, Wage and Hour Division, Department of Labor, intervenor, appellants, submit herewith their statement showing the basis of the jurisdiction of the Supreme Court on appeal.

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the final decree complained of is conferred by:

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U. S. Code, Suppl. III, Tit. 28, Sec. 45a).

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4); U. S. Code, Tit. 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U. S. Code, Tit. 28, Sec. 45 and 47a, Suppl. III).

Motor Carrier Act, 1935, sec. 205 (h) (c. 498, 49 Stat. 543; U. S. C. Suppl. I, Title 49, Sec. 305 (h)).

B. The statute of the United States, the construction of which is involved herein, is the Act of August 9, 1935 (c. 498, 49 Stat. 543; U. S. C. Suppl. I, Title 49, Sec. 304 (a) (1) (2) and (3)), known as the Motor Carrier

Act, 1935. The pertinent provisions of the Act read as follows:

Sec. 204 (a). It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications, and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operations and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. * * *

C. The decree sought to be reviewed was entered January 24, 1940. The petition for appeal was filed and the order allowing appeal was entered January —, 1940.

D. Plaintiffs, The American Trucking Associations, Inc., and five common carriers by motor vehicle subject to the Motor Carrier Act, 1935, instituted this action, pursuant to Section 205 (h) of the Motor Carrier

Act, 1935 (U. S. C., Title 49, Sec. 305 (a))[1] to set aside an order of the Interstate Commerce Commission, dated June 15, 1939, and to enforce by writ of mandatory injunction the Commission's taking of jurisdiction of a petition filed by the plaintiffs on June 9, 1939, requesting the Commission to hold hearings and prescribe maximum hours of service for all employees of motor carriers subject to the Motor Carrier Act, except employees whose duties in no way affect safety of operation of motor vehicles.[2]

By its report and order of June 15, 1939, the Commission found that the Motor Carrier Act, 1935, does not empower it to prescribe maximum hours of service for employees of motor carriers whose activities do not affect safety of operation and that because of this lack of power it would be futile to hold hearings, as requested

[1] Section 205 (h) provides:

"Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under part I: *Provided*, That, where the Commission, in respect of any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under the Urgent Deficiency Appropriations Act, October 22, 1913, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction."

[2] Shortly after the passage of the Motor Carrier Act, 1935, the Commission had established qualifications and maximum hours for *drivers of motor vehicles* operated by common and contract carriers, having found that the activities of these employees *affect safety of operation*, but had left undecided the extent of its jurisdiction over other employees. Ex Parte MC-2, 3 M. C. C. 665, 690; 6 M. C. C. 557; 11 M. C. C. 203.

by the petition. Accordingly, the petition was denied.[3]

By consent final hearing of this action was held on the plaintiffs' motion on the pleadings before a statutory court of three judges. Elmer F. Andrews, Administrator, Wage and Hour Division, Department of Labor,[4] intervened, as a defendant, supporting the Commission's denial of jurisdiction and asserting his own jurisdiction over the hours of service of all employees of common and contract carriers whose activities do not affect safety of operation, by virtue of the Fair Labor Standards Act (Act of June 25, 1938, 52 Stat. 1060).[5]

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[3] The Commission's report and order was based upon a prior report of the Commission, incorporated by reference, in Ex Parte No. MC–28, dated May 9, 1939, a proceeding instituted upon the Commission's own motion for the purpose of determining the extent of its power, under Section 204 (a) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle. Interested parties were given opportunity to file briefs and were heard in oral argument. In this report the Commission reached the conclusion, for reasons therein fully stated, that its power under Section 204 (a) (1) (2) and (3) of the Motor Carrier Act, 1935, is limited to prescribing maximum hours of service for employees whose activities affect safety of operation.

[4] By order of the district court, Harold D. Jacobs, as successor in office to Elmer F. Andrews, Administrator, has been substituted as a party defendant.

[5] Section 13b (1) of the Fair Labor Standards Act exempts from its maximum hours provisions "any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935."

The sole issue presented to the court being one of statutory construction, no evidence was submitted. The court held, Justice Letts dissenting, that Section 204 (a) (1) (2) and (3) conferred upon the Commission the questioned power. The final decree entered January 24, 1940, set aside the Commission's order denying jurisdiction, and directed the Commission to take jurisdiction of the plaintiffs' petition in conformance with the opinion of the Court.

E. The question presented is substantial and of great importance. Whether or not the Interstate Commerce Commission or the Administrator of the Wage and Hour Division, Department of Labor, has jurisdiction to prescribe maximum hours of service for those employees of common and contract carriers by motor vehicle whose activities do not affect safety of operation is the issue. The rights and duties of many thousands of employers and employees depend upon its determination.

F. The following cases sustain the jurisdiction of the Supreme Court to review the decree of the District Court:

Church of the Holy Trinity v. *United States*, 143 U. S. 457.

Ozawa v. *United States*, 260 U. S. 178.

Piedmont & Northern Railway Company v. *I. C. C.*, 268 U. S. 299.

Sorrells v. *United States*, 287 U. S. 435.

A copy of the majority opinion of the District Court, the dissenting opinion, and the final decree is appended hereto.

Respectfully submitted.

Francis Biddle, Solicitor General; Thurman Arnold, Assistant Attorney General; David A. Pine, United States Attorney; Elmer B. Collins, Frank Coleman, Special Assistants to the Attorney General, for the United States of America; Daniel W. Knowlton, Chief Counsel; Nelson Thomas, Attorney for the Interstate Commerce Commission; George A. McNulty, General Counsel, Wage & Hour Division, Department of Labor, for Harold D. Jacobs, Successor in office of Elmer F. Andrews, Administrator.

ON PETITION FOR MANDATORY INJUNCTION

Filed February 5, 1940

* * * * *

Before GRONER, Chief Judge, United States Court of Appeals, and BAILEY and LETTS, U. S. District Judges.

* * * * *

The main question we have to answer is whether defendant, Interstate Commerce Commission, has jurisdiction and power under Sec. 204 (a) (1) and (2) of the Motor Carrier Act of 1935 [1] to establish reasonable requirements with respect to qualifications and maximum hours of service for all employees of common and contract carriers by motor vehicle.

Plaintiff, American Trucking Associations, Inc., is an organization of motor carriers subject to regulation under the Act, and its principal place of business is in the District of Columbia. The other plaintiffs are common carriers by motor vehicle in interstate commerce, likewise subject to regulation.

The Motor Carrier Act, which is Part II of the Interstate Commerce Act,[2] contains a declaration of policy, as follows:

> Sec. 202 (a). It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize

[1] 49 Stat. 543, 49 U. S. C. A. 301, *et seq.*; 10A F. C. A. Tit. 49, Sec. 301, *et seq.*

[2] 49 U. S. C. A. 1, *et seq.*, 10A F. C. A. Tit. 49, Secs. 1, *et seq.*

and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several states and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

The duties and powers of the Commission are described in Sec. 204 (a):

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications, and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of sections 204 (d) and (e), 205, 220, 221, 222 (a), (b), (d), (f), and (g), and 224 of this part.

Shortly after the passage of the Act the Commission established qualifications and maximum hours for drivers of motor vehicles operated by common and contract carriers.[3] It left undecided the extent of its jurisdiction over other employees. Subsequently, and after the passage in 1938 of the Fair Labor Standards Act,[4] the Commission again instituted proceedings to determine the previously undetermined extent of its jurisdiction. It concluded that its power over employees was limited to the promotion of safe operation, in consequence of which it had jurisdiction to establish hours of work and qualifications of drivers, but of no other employees.[5]

Plaintiffs filed their petition June 9, 1939, asking the Commission to hear evidence and establish regulations as to all employees. The Commission declined to do so, adhered to its former ruling, and declared that any

[3] Ex Parte MC-2, 3 M. C. C. 665, 690, 6 M. C. C. 557, 11 M. C. C. 203.

[4] 52 Stat. 1060.

[5] Ex Parte MC-28, 13 M. C. C. —.

further consideration would be futile, since it had no power to do the things asked. This action was then begun against the United States and the Commission. The Administrator of the Wage and Hour Division was allowed to intervene.

Jurisdiction of the court is conceded. Sec. 205 (h) of the Motor Carrier Act; *Int. Com. Comm.* v. *Humboldt Steamship Co.*, 224 U. S. 474; *Louisville Cement Co.* v. *Int. Com. Comm.*, 246 U. S. 638; *Kansas City So. Ry.* v. *Int. Com. Comm.*, 252 U. S. 178.

At the hearing counsel stated that, if the Act be construed as plaintiffs insist, the Commission will have to prescribe qualifications and hours for stenographers, clerks, accountants, mechanics, solicitors, and other employees of whose duties and qualifications it has no special knowledge; in this function its determination would not be based upon considerations of transportation—on which it is held to be expert—but upon social and economic considerations, matters on which it is not qualified or equipped, and which would entail the performance of a duty wholly foreign to its normal activities. But even if this be granted, we think there is no doubt that Congress had the power to impose the challenged duty. And the answer to the query cannot be found in the fact of inconvenience to the commission,* but must be first looked for in the language of the statute. If the words are clear, there is no room for construction.

> To search elsewhere for a meaning either beyond or short of that which they disclose is to

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* *U. S. ex rel. Kansas City Sou. R. Co.* v. *I. C. C.*, 252 U. S. 178.

> invite the danger, in the one case, of converting what was meant to be open and precise, into a concealed trap for the unsuspecting, or, in the other, of relieving from the grasp of the statute some whom the Legislature definitely meant to include.—*Van Camp & Sons Co.* v. *American Can Co.*, 278 U. S. 245, 253.

This rule has been applied even where the literal meaning leads to a hard or unexpected result. *Crooks* v. *Harrelson*, 282 U. S. 55, 60; *Armstrong Paint & Varnish Works* v. *Nu-Enamel Co.*, 305 U. S. 315, 333. Statutes have been annulled by construction only where the effect of giving the words their clear meaning would "offend the moral sense, involve injustice, oppression or absurdity". *U. S.* v. *Goldenberg*, 168 U. S. 95, 103; *Van Camp & Sons Co.* v. *American Can Co.*, 278 U. S. 245, 253–4.

Guided by this rule, we find that Congress in the first section of the Act declared the definite policy to regulate motor transportation (1) so as to foster sound economic conditions in the public interest; (2) to promote adequate, economical, and efficient service and reasonable charges; (3) to prevent unjust discriminations, undue preferences, or advantages; (4) to avoid destructive competition; (5) to coordinate transportation by motor carriers and other carriers; (6) to develop and preserve a highway transportation system adapted to the needs of commerce and the national defense. The stated objects demonstrate beyond question that Congress has preempted the entire field. To the achievement of the ends sought, Congress provided that it should be the duty of the Commission to regulate carriers by establishing reasonable requirements with

respect to (a) service; (b) transportation of baggage and express; (c) uniform systems of accounts, records, and reports; (d) qualifications and maximum hours of service of employees; (e) safety of operation and equipment.

In (d) the word "employees" is inclusive. There is nothing in its use or in its relation to other words in the section which, considered in the ordinary sense, can be said to indicate only a particular class of employees. If Congress had intended to distinguish between those employees engaged in the actual operation of motor vehicles and those engaged in other work, it could have done so, as it did in a former statute,[7] by the addition of less than half a dozen words. Hence, to read that limitation into the section would be not only to disregard the letter of the law but to find, without guide or compass in the Act, a legislative intent to that end. To the contrary, such guide as there is—outside the distinct and definite meaning of the words—supports the view that Congress used the language of the section advisedly, and meant precisely what it said. For the third paragraph of Sec. 204, which concerns *private* carriers, expressly limits the power of the Commission over qualifications and hours to those employees whose work relates to safety of operation. This distinction between the two classes of carriers is convincing of a definite purpose; and the reason for it is obvious: private carriers are defined to be persons who transport for themselves—in furtherance of a com-

[7] In the Hours of Service Act, 34 Stat. 1415, 45 U. S. C. 61, Congress by definition limited the word "employees" to "persons actually engaged in or connected with the movement of any train."

mercial enterprise—or as bailees, their own or another's property in interstate commerce.[8] As to such carriers, Congress properly concluded that to bring *all* their employees under the Commission's jurisdiction—as well as those engaged in the manufacturing or commercial end of the business, and having in themselves no direct relation to motor transportation—would create an anomalous situation, as it would.

Unless what has been said is incorrect, nothing remains except to ascertain whether, in giving effect to the words of the statute, we create a situation so "glaringly absurd" as to impel the conclusion Congress could not have intended such a result. With due deference to the dilemma of the Commission, we are unable to say that this is true. At the time of the passage of the statute, the Fair Labor Standards Act had not been passed or even considered by Congress, but there was in effect a law known as the "National Industrial Recovery Act,"[9] under which codes were established to regulate the hours of service of all classes of employees of motor carriers. The Motor Carrier Act expressly provided that it should supersede the pro-

[8] Sec. 203 (a) (17). The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle," who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

[9] 48 Stat. 195, 15 U. S. C. A. 701, *et seq.*, 4 F. C. A. Tit. 15, secs. 701, *et seq.*

visions of the former codes.[19] There were also in effect in a majority of the states some sort of legislation covering, with diversity of detail and lack of uniformity, hours of service of employees, including drivers of motor vehicles. It is not unreasonable, in these circumstances, to assume that Congress, aware of the problem as it applied to interstate commerce and the advisability of uniformity, chose to place upon the Commission the details of its solution. Certainly, aside from the consumption of the Commission's time, there is nothing glaringly absurd in this, nor reason to suppose a better agency could be found for the purpose. The Commission's fear that it may be called upon to establish qualifications for executive officials, solicitors, and lawyers, is overstrained. None of these classes is within the category of "employees" as that word is used in public service or labor legislation. The hearings before the committees of Congress developed that the percentage cost of labor was equal to nearly half the total gross revenue of motor carriers, and the special attention of Congress was directed by representatives of the unions to the labor aspect as applied to the problems of uniformity and stabilization, because of widely diversified business organization, absence of labor organization in some regions, and the claimed unreasonable practices of many operators.

And it is easy to see that stabilization of labor conditions as applied to this industry is an important, and

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[19] Sec. 204 (b), 49 U. S. C. A. 304 (b), 10A F. C. A., Tit. 49, Sec. 304 (b).

indeed a necessary, part of the establishment of rates and general business regulation, matters as to which the Commission admittedly is expert, and these objectives appear as part and parcel of the purposes of the legislation. In this aspect, it is reasonable to conclude that Congress had them in mind when later, upon the passage of the Fair Labor Standards Act, it provided specifically that Sec. 7 thereof [11]—which establishes maximum hours of service—should not apply "with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935, or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act." The necessity of separate provisions for the exemption of employees of the two classes of carriers is manifest. There are no private carriers by rail subject to the Commission's jurisdiction. Congress, therefore, used inclusive language as to the employees of railroads. There are, however, many private motor carriers who are subject to a limited regulation by the Commission, and this is true for reasons which we have already explained. Their employees not subject to the jurisdiction of the Commission would, by the use of the language employed in the case of railroads, have been left outside of the provisions of the Fair Labor Standards Act. It was obviously the recognition of this fact alone that induced the use of different language in each instance.

[11] 29 U. S. C. A. 207, 9 F. C. A., Tit. 29, Sec. 207.

In the view we take, the language of the disputed section is so plain as to permit only one interpretation, and we find nothing in the Act as a whole which can with any assurance be said to lead to a different result. The circumstances under which the section was placed in the bill may possibly have created a situation not contemplated by its sponsors, but to say that this is true would be pure speculation, in which we have no right to indulge and upon which we can base no conclusion. We are, therefore, obliged to hold that the Commission was mistaken in limiting its powers to the drivers of trucks and buses.

A secondary question remains to be discussed. The intervener says that, if the statute be read literally, it is unconstitutional because it lacks the necessary legislative standard of qualifications or of service hours for application by the Commission. The rule announced in *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, is cited to sustain this contention. But we think the standard established in the Act sufficient to escape the condemnation of the rule applied in that case. Even there the Supreme Court was careful to point out that legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution, the Court said, has never been regarded as denying to Congress the necessary resources of flexibility and practicality which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits.

Prior to the passage of the Motor Carrier Act regulation of employees of motor carriers had been exhaustively dealt with under the N. I. R. A. code, and there had been about two years of experience in operating under these codes. There were also the standards set up by the states, and there was the express provision in the statute that the Commission should, in setting up the new order, establish only reasonable requirements. The Commission itself found in this delegation a sufficient criterion to enable it to establish qualifications and hours of service for employees in the safety of operation. Why, then, are the standards inadequate when applied to the congressional mandate to secure safety of equipment, efficient service, reasonable rates, and economic soundness? In this respect, the Act is not different from that vesting powers in the Commission in relation to railroads, and the latter powers have invariably been sustained. Adequate legislative standards have been found in such general terms as "Public interest" and "reasonable rates," etc. In such cases the public need was a sufficient standard, and the detail involved required a flexibility inherent in administration by the Commisson. *Avent* v. *U. S.*, 266 U. S. 127; *Intermountain Rate Cases*, 234 U. S. 476; *I. C. C.* v. *Goodrich T. Co.*, 224 U. S. S. 194; *St. Louis, I. & S. Co.* v. *Taylor*, 210 U. S. 281; *New York Central Securities Corp.* v. *U. S.*, 287 U. S. 12. These cases have turned upon the right of Congress to delegate powers to the Commission to promote sound economic conditions and efficient public service. In the Motor Carrier Act Congress has extended the power to working hours. Unquestionably, a limit might have been set, as in the Fair

Labor Standards Act. But it is clear that rigidity was not practical in motor carrier transportation, and this fact is recognized by the Commission in a report in one of the ex parte proceedings to which we have referred.

Congress, therefore, vested discretion to apply limits in the situations to be developed in hearings under Sec. 225 of the Act. We see no reason to doubt that reasonable requirements with respect to maximum hours of service is quite as definite as "reasonable rates." See *Trustees of Saratoga Springs* v. *Saratoga Electric Light & Power Co.*, 191 N. Y. 123, 83 N. E. 693; *Interstate Com. Commission* v. *Railway Co.*, 167 U. S. 479, 494. It is also apparent that Congress intended the Commission to avail of the experience and knowledge of other bureaus of the government, for authority to this end is provided in Sec. 225.[12]

This, as it seems to us, is just another instance where Congress has expressed a policy, prescribed a standard, and left to the Commission the duty of applying the policy and the standard to the facts of differing situations. *Hampton & Co.* v. *United States*, 276 U. S. 394.

We, therefore, think the Commission was in error in denying jurisdiction, and that an order should be made

[12] The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter.

requiring it to consider plaintiffs' petition in accordance with the views expressed in this opinion.

(Signed) D. LAWRENCE GRONER.
(Signed) JENNINGS BAILEY.

DECEMBER 4, 1939.

DISSENTING OPINION

LETTS, J., dissenting: I concede that a literal construction of the statute leads to the result announced in the court's opinion but I am not prepared to agree that Congress intended the result. The reason of the law should prevail over its letter. *Sorrells* vs. *United States*, 287 U. S. 435.

The provisions of Section 202 of the Motor Carrier Act evince the clear intent of Congress to limit the jurisdiction of the Commission to regulating the motor-carrier industry as a part of the transportation system of the nation. The literal construction which the court has given the Act extends the regulation to factors which are not characteristic of transportation or inherent in the industry. It would seem to enlarge the jurisdiction of the Commission and extend it beyond the Congressional grant of power. Section 202 (a) provides in part as follows:

> It is hereby declared to be the policy to Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of and foster sound economic conditions in, such transportation and among such carriers in the public interest.

Congress was confronted with a situation which demanded a practical solution. Casualties on the road had become countless. The legislative history seems to evidence a purpose to effect safety of operation. Congress was aware that many states had enacted statutes prescribing maximum hours of service for drivers of motor vehicles operated in intrastate commerce. Of the forty-three states in which such statutes are found none has dealth with maximum hours of other employees. In such state statutes there was a lack of uniformity which operated against the public interest. By the enactment of the Motor Carrier Act Congress sought to conform such regulations. By the enactment the lack of uniformity in the detail of such statutes was overcome so far as the regulations related to interstate commerce either directly or indirectly. It has often been said by the Supreme Court that uniformity of regulation is one of the purposes of the commerce clause of the Constitution. Noncompliance with a Federal law will not be excused because it is at variance with a state statute. Congress in the enactment of the Motor Carrier Act exercised its power to insure uniformity of regulation as against the influence of conflicting and discriminating state legislation in relation to interstate commerce.

The known and grave increase in casualties and the need of conformity of regulation required serious thought and prompt Congressional action. The remedy which Congress afforded had direct relation to the evils of which it was aware and which it sought to cure. I find nothing in the legislative history which indicates

that Congress in its consideration of this act gave thought to sociological problems or economic considerations beyond those naturally incident to safety of operation in interstate commerce. The history of the legislation does not reveal any legislative concern about unemployment or other related social and economic problems which would have been of prime importance if Congress had undertaken to regulate all employees including those whose duties or service have no relation to safety of operation. The inclusive language here considered was not placed in the bill by the legislative committees. Nor was it considered by the committees or discussed by any witness at any hearing. It was placed in the bill by amendment offered on the floor of the Senate and accepted without debate. The amendment was not germane to the bill and if given a literal interpretation produces an unexpected and unintended result. It would extend the jurisdiction of the Commission to social problems which Congress had no thought of doing.

This view is not inconsistent with but in recognition of the Commission's power to prescribe qualifications and hours of service for all such employees whose duties relate to safety of operation. It should not be said as a matter of law that such jurisdiction extends to such classes of employees whose service has no relation to safety of operation. What classes of employees are to be so regulated is a mixed question of law and fact which will be decided in proper cases after hearings are held to determine the facts.

I am of opinion that to give the Act the broad construction which a literal meaning requires leads to an

unreasonable result which is inconsistent with the intent of Congress. I conclude that this case falls within the group of cases controlled by the rule announced in the case of *Ozawa* v. *United States*, 260 U. S. 178, as follows:

> It is the duty of this court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment, and inquire into its antecedent history, and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail.

See also *Sorrells* v. *United States*, 287 U. S. 435. To hold otherwise requires that we find in the statute necessary standards to warrant the delegation of Congressional powers which a literal reading of the statute implies. I am unable to find standards in the language of the act which will protect it from assault on constitutional grounds. The absence of such standards negatives and rebuts the implication that Congress intended to extend the jurisdiction of the Commission.

(Signed) F. DICKINSON LETTS.

U. S. GOVERNMENT PRINTING OFFICE: 1940

No. 713

In the Supreme Court of the United States

OCTOBER TERM, 1939

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLANTS

v.

THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLANTS

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CITATIONS

Miscellaneous—Continued.

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OPINION BELOW

The opinion of the district court (R. 38) is reported in 31 F. Supp. 35.

JURISDICTION

The judgment of the district court was entered January 24, 1940 (R. 34–35). The petition for appeal (R. 36) was filed February 5, 1940, and the order allowing the appeal (R. 48) was entered the same day. On March 4, 1940, this Court noted

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probable jurisdiction. Jurisdiction is conferred on this Court by Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 938, 28 U. S. C. Sec. 345), and by the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 219, 220, 28 U. S. C. Secs. 47, 47a).

QUESTION PRESENTED

Whether Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, confers upon the Interstate Commerce Commission power to establish qualifications and maximum hours of service for all employees of common and contract motor carriers, in which case all such employees are exempt from the maximum hour and overtime provisions of the Fair Labor Standards Act of 1938; or

Whether the Commission's power extends only to employees whose duties affect the safety of operation of motor vehicles, in which case employees whose duties do not affect safety of operation are subject to the maximum hour and overtime provisions of the Fair Labor Standards Act.

STATUTES INVOLVED

The Motor Carrier Act, 1935 (August 9, 1935, c. 498, 49 Stat. 543, 49 U. S. C., Supp. V, Sec. 301 ff.) provides:

> SEC. 204 (a). It shall be the duty of the Commission—
>
> (1) To regulate common carriers by motor vehicle as provided in this part, and to that

end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment * * *

Other provisions of the Motor Carrier Act referred to in this brief are set forth in the Appendix.

The Fair Labor Standards Act of 1938 (June 25, 1938, c. 676, 52 Stat. 1060, 1063, provides:

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the

effective date of this section [October 24, 1938],

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed [29 U. S. C., Supp. V, Sec. 207].

SEC. 13 (b). The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act [29 U. S. C., Supp. V, Sec. 213 (b)].

Reading the provisions of the two statutes together, it will be seen that as regards the regulation of hours of labor of employees of interstate motor carriers, the Fair Labor Standards Act begins where the Motor Carrier Act ends. The exemption from the maximum hour and overtime requirements of the Fair Labor Standards Act applies to those employees of motor carriers, and only those,

as to whom the Interstate Commerce Commission has power, under Section 204 of the Motor Carrier Act, to establish qualifications and maximum hours of service.

STATEMENT

The Motor Carrier Act, 1935, became effective October 1, 1935. Shortly thereafter the Interstate Commerce Commission on its own motion instituted a proceeding entitled *Ex parte No. MC–2,* 3 M. C. C. 665, for the purpose of prescribing maximum hours of service of motor-carrier employees pursuant to Section 204 (a) of the Motor Carrier Act. On December 29, 1937, the Commission issued a report concluding "that a weekly limitation of 60 hours on duty will meet the requirements of safety" for drivers of common and contract motor carriers (3 M. C. C. 665, 686). In the course of its report the Commission stated: "we feel that the Congress would have given us clearer and more explicit directions and a more definite statement of policy than it has done if it had intended to divorce our authority over maximum hours of service from safety of operation. * * * For these reasons, until the Congress shall have given us a more particular and definite command in the premises, we shall limit our regulations concerning maximum hours of service to those employees whose functions in the operation of motor vehicles make such regulations desirable because of safety considerations" (3 M. C. C. 665, 667). The 60-hour workweek for drivers was made effective July 12, 1938.

Section 7 (a) of the Fair Labor Standards Act—providing for a 44-hour workweek during the first year of its operation, with time and a half for overtime, and a reduction to 42 hours per week on October 24, 1939, and to 40 hours on October 24, 1940—became effective on October 24, 1938. The exemption from Section 7 (a) of the Fair Labor Standards Act contained in Section 13 (b) (1) of that Act raised the question whether some 200,000 clerks, stenographers, bookkeepers, accountants, warehousemen and similar employees employed by common and contract motor carriers, whose duties do not affect safety of operation, were covered by the Motor Carrier Act and subject to the jurisdiction of the Interstate Commerce Commission, or whether they were covered by the Fair Labor Standards Act and subject to the jurisdiction of the Wage and Hour Division of the United States Department of Labor.

Accordingly the Interstate Commerce Commission instituted, again on its own motion, a proceeding entitled *Ex parte No. MC–28,* 13 M. C. C. 481 (R. 10), for the purpose of determining the extent of its jurisdiction under Section 204 (a) (1) and (2) of the Motor Carrier Act to prescribe qualifications and maximum hours of service of employees of common and contract motor carriers. After receiving briefs from interested parties and after hearing extensive oral argument, the Commission, on May 9, 1939, concluded that its power under Section 204 (a) (1) and (2) was "lim-

ited to prescribing qualifications and maximum hours of service for those employees of common and contract carriers whose activities affect the safety of operation of motor vehicles engaged in transporting passengers and property in interstate and foreign commerce, and for the purpose of promoting such safety of operation" (13 M. C. C. at 488; R. 18).[1] The same position was adopted by the Wage and Hour Division, which interpreted Section 13 (b) (1) of the Fair Labor Standards Act to exempt only those employees of common and contract motor carriers whose duties affect safety of operation (Interpretative Bulletin No. 9, Wage and Hour Division, p. 2).

On June 9, 1939, the American Trucking Associations, Inc., and five common carriers of motor vehicles subject to the Motor Carrier Act, 1935, the appellees herein, filed a petition (R. 20–23) with the Interstate Commerce Commission requesting the Commission to hold hearings and prescribe maximum hours of service for all employees of common and contract motor carriers subject to the Motor Carrier Act, including those employees whose activities in no way affect safety of operation of mo-

[1] The Commission specifically left open the question whether any employees, other than drivers, engage in activities which affect safety of operation (13 M. C. C. at 488; R. 18). This issue is not before the Court since appellees are seeking to compel the Commission to take jurisdiction over all employees of common and contract motor carriers whether their duties affect safety of operation or not.

tor vehicles. On June 15, 1939, the Commission (No. MC–C–139, 16 M. C. C. 497; R. 24) reaffirmed *Ex parte No. MC–28* and held that it did not possess power under the Motor Carrier Act to prescribe qualifications and maximum hours of service for employees of common and contract motor carriers whose duties do not affect safety of operation. Accordingly the Commission found that it would be useless to hold the hearings requested by the appellees and, consequently, denied their petition (16 M. C. C. at 497; R. 25).

On June 22, 1939, the appellees instituted this action in the United States District Court for the District of Columbia pursuant to Section 205 (h) of the Motor Carrier Act, 1935 (49 U. S. C., Supp. V, Section 305 (h)).[2] By their complaint (R. 1–9) the appellees sought to set aside the order of the Commission of June 15, 1939, to obtain a decree that the Commission has power to establish qualifi-

[2] Section 205 (h) provides:

"Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under Part I: *Provided*, That, where the Commission, in respect to any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under the Urgent Deficiency Appropriations Act, October 22, 1913, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction."

cations and maximum hours of service for all employees of common and contract motor carriers, and to compel the Commission, by mandatory injunction, to take jurisdiction of the petition filed by the appellees on June 9, 1939 (R. 9).

On June 28, 1939, and July 18, 1939, the Interstate Commerce Commission (R. 25) and the United States (R. 27), respectively, filed answers to the complaint of the appellees denying the power of the Commission to prescribe qualifications and maximum hours of service for employees of common and contract motor carriers whose activities do not affect safety of operation. On August 2, 1939, the appellees moved for judgment on the pleadings (R. 29). On September 9, 1939, the motion (R. 29) of Elmer F. Andrews, Administrator of the Wage and Hour Division, to intervene as a party defendant in support of the position of the Interstate Commerce Commission and the United States was granted by the court (R. 30). The intervener's answer (R. 31) likewise denied the power of the Interstate Commerce Commission to prescribe maximum hours of service with respect to the employees in question, and asserted that these employees were subject to the provisions of the Fair Labor Standards Act.

A three-judge court was convened (R. 34; Section 205 (h) of the Motor Carrier Act, 49 U. S. C., Supp. V, Section 305 (h); Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 219, 28 U. S. C.,

Sections 45, 47 (a)). The case was heard, by consent, on the appellees' motion for judgment on the pleadings (R. 34). The court held, Judge Letts dissenting, that the Interstate Commerce Commission was empowered by Section 204 (a) (1) and (2) of the Motor Carrier Act to prescribe maximum hours of service with respect to *all* employees of common and contract carriers by motor vehicle (R. 38). The decree of the court (R. 34), entered January 24, 1940, set aside the Commission's order of June 15, 1939, adjudged that the Commission had power under Section 204 (a) (1) and (2) of the Motor Carrier Act to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle, and directed the Commission to take jurisdiction of the appellees' petition in conformance with the opinion of the court.

The United States, the Interstate Commerce Commission, and the Administrator of the Wage and Hour Division have jointly appealed.[3] Petition for appeal was filed February 5, 1940 (R. 36), and the order allowing the appeal was entered the same day (R. 48).

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[3] On February 5, 1940, Harold D. Jacobs, having succeeded Elmer F. Andrews as Administrator, was substituted for him as intervener (R. 35), and on March 25, 1940, Philip B. Fleming, having, in turn, succeeded Jacobs as Administrator, was by order of this Court substituted for him as intervener.

SPECIFICATION OF ERRORS TO BE URGED

The district court erred—

(1) In holding that the order entered June 15, 1939, by the Interstate Commerce Commission in the proceeding entitled "MC–C–139" is illegal and void, and in setting the order aside.

(2) In holding that the Commission is invested with jurisdiction and power, under Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle; and in failing to hold, on the contrary, that the jurisdiction and power of the Commission is limited to those employees whose activities affect safety of operation.

(3) In requiring and directing the Commission to take jurisdiction, upon the petition of the appellees, in conformance with the opinion of the court.

(4) In failing to dismiss the petition of the appellees.

SUMMARY OF ARGUMENT

I

One of the primary purposes of the Motor Carrier Act, 1935, was the promotion and enhancement of safety of operation of all motor vehicles operated by motor carriers engaged in interstate and foreign commerce. It was solely to this end that Congress empowered the Interstate Com-

merce Commission to prescribe qualifications and maximum hours of service for employees of motor carriers.

The intent of Congress that only those employees of common and contract motor carriers whose duties affect safety of operation should be subject to regulation by the Commission is clear. Few statutory provisions have as demonstrative a legislative history as does Section 204 (a) (1) and (2) of the Motor Carrier Act. The Congressional intent is further revealed by an analysis of provisions of the Motor Carrier Act other than Section 204 (a) (1) and (2). These provisions point to "safety of operation" as the sole Congressional purpose in empowering the Commission to prescribe qualifications and maximum hours of service pursuant to Section 204 (a) (1) and (2). Federal statutes regulating hours of service in other fields of transportation and state motor carrier statutes, in the light of which the meaning of the Motor Carrier Act must be sought, indicate a legislative policy directed toward the end of "safety of operation." Finally, the fact that the regulatory power was conferred by the Motor Carrier Act upon an agency expert in transportation matters alone, unattended by the legislative standards traditionally guiding the regulation of hours of work, supports the view that Congress intended to limit the Commission's power to those employees whose activities affect safety of operation.

II

The purposes and the legislative history of the Fair Labor Standards Act afford additional support for the view that the coverage of Section 204 (a) (1) and (2) of the Motor Carrier Act is restricted to those employees engaged in activities affecting safety of operation. The exemption provided by Section 13 (b) (1) of the Fair Labor Standards Act with respect to those employees as to whom the Interstate Commerce Commission has power to prescribe qualifications and maximum hours of service was enacted by Congress upon the assumption that the Commission's power was limited to "safety" employees. Employees of motor carriers whose duties do not affect safety of operation are engaged in pursuits similar to those followed by millions of other employees within the scope of the Fair Labor Standards Act and, consequently, more properly fall within the scope of that statute than of the Motor Carrier Act.

ARGUMENT

I

CONGRESS INTENDED IN THE MOTOR CARRIER ACT TO EMPOWER THE INTERSTATE COMMERCE COMMISSION TO REGULATE MAXIMUM HOURS OF SERVICE OF ONLY THOSE EMPLOYEES WHOSE DUTIES AFFECT SAFETY OF OPERATION

Section 204 (a) (1) and (2) of the Motor Carrier Act gives the Interstate Commerce Commission power to "establish reasonable requirements with respect to * * *, qualifications and maximum

hours of service of employees * * *" of common and contract motor carriers. The sole question in this case is whether Congress, when it used the word "employees," intended to subject to regulation by the Commission all employees or only those employees whose duties affect safety of operation on the highways. It is the contention of the United States, of the Interstate Commerce Commission, and of the Administrator of the Wage and Hour Division that Congress intended to limit the word "employees" to those employees whose duties affect safety of operation on the highways, and that the Court should give effect to this intention of Congress.

There is some suggestion in the opinion below that the word "employees" is so clear in its meaning as not to require or permit interpretation. However, the conclusion of that court that "employees" means "all employees" obviously involves interpretation of the word, and the court engaged in further construction when it stated (R. 42–43) that the term "employees" did not include "executive officials, solicitors, and lawyers". And this Court has frequently held that such general terms as "person" or "persons" are to be interpreted in the light of the purposes sought by Congress in enacting the particular statute in question. *Cf. United States* v. *Palmer*, 3 What. 610, 631; *Lau Ow Bew* v. *United States*, 144 U. S. 47; *Ozawa* v. *United States*, 260 U. S. 178; *United States* v.

Thind, 261 U. S. 204. "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers." *Church of the Holy Trinity* v. *United States*, 143 U. S. 457, 459.

By "employees" Congress meant only those employees whose duties affect safety of operation on the highways. The legislative history of the Motor Carrier Act reveals that the sole purpose of Congress in authorizing the Commission to regulate qualifications and maximum hours of service was to promote safety on the highways. Other provisions in the Motor Carrier Act likewise indicate that this was the exclusive intent of Congress, as do the many analogous federal and state statutes in the field of carrier regulation. The nature of the Commission's experience and the failure of Congress to set up standards of the sort customarily attending the regulation of hours is further proof of its limited purpose and intent.

1. *The Legislative History of Section 204 (a) (1) and (2).*—As first introduced on February 4, 1935, the bill which later became the Motor Carrier Act (S. 1629, 74th Cong., 1st Sess.) contained no provision authorizing the Interstate Commerce Commission to regulate qualifications or maximum hours of service of any employees, but merely empowered the Commission to investigate the need for establishing qualifications and maximum hours

of service of employees of motor carriers (S. 1629, Section 325).[4] On February 27, 1935, Mr. Frank McManamy, then Chairman of the Legislative Committee of the Interstate Commerce Commission, appeared before the Senate Committee on Interstate Commerce and urged that the bill be amended so as to include the provision for regulation of qualifications and maximum hours of service of employees of common and contract motor carriers now contained in Section 204 (a) (1) and (2) of the Motor Carrier Act. Mr. McManamy's testimony shows plainly that he contemplated empowering the Commission to regulate the qualifications and maximum hours of service of only those employees whose duties affect safety of operation. His testimony follows:

> MR. MCMANAMY. The other amendment to which I refer I think is more important because it relates to *safety*. In Section 2 (a) (1) and (2) of S. 394 there are provisions authorizing the Commission to establish reasonable requirements with respect to certain matters including "*qualifications of maximum hours of service of employees.*" Somewhat similar provisions appear in S. 1629, but they omitted the words above quoted. Instead, Section 325 authorizes the Commission to investigate and report on the need for such regulation. *Further investigation of the need for regulation of the*

[4] This provision became Section 225 of the Act as finally enacted.

hours of service of employees engaged in interstate transportation should hardly be necessary because the hours of service of railroad employees have been regulated by law for 27 years and it has proven to be one of the most important provisions of all the safety legislation.

The regulation of the hours of service of bus and truck operators is far more important from a safety standpoint than the regulation of the hours of service of railroad employees because the danger is greater. Locomotives and cars will stay on the rails and a moment's drowsiness or inattention on the part of the enginemen may not result in an accident. With highway traffic it is different because the vehicle must be guided by the operator. At the present time even the slowest moving trucks are operated at speeds of 44 feet per second or greater, therefore, 2 or 3 seconds' drowsiness or inattention to duty is almost certain to cause an accident. A further reason is that the regulations of many of the States contain such provisions and it would be unfair to allow interstate carriers to operate in disregard of such provisions. It is my view, therefore, that definite hours of service provisions should be included in the bill. This could be accomplished by inserting in Section 304 (a) (1) and (2), lines 9 and 15, page 8, following the word "records" in both lines, the words which appear in S. 394, as follows: *"qualifications and maximum hours of service of employees"* (Hearings

on S. 1629 before the Committee on Interstate Commerce, United States Senate, 74th Cong., 1st Sess., pp. 122–123). [Italics supplied.][3]

The regulation of the hours of service of railroad employees to which Commissioner McManamy referred as qualifying the Commission to regulate the hours of employees of motor carriers and as demonstrating the desirability of such regulation from a safety standpoint, is limited to employees whose activities affect the safety of operations of trains, viz., "persons actually engaged in or connected with the movement of any train." Hours of Service Act of March 4, 1907, c. 2939, Sec. 2, 34

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[3] See also the statement of Senator Wheeler before the Senate Committee on Interstate Commerce on March 1, 1935. Senator Wheeler stated:

"It does seem to me that in the trucking business one of the things that should be done would be to regulate hours of service. I can see how extremely essential it is because of the fact that in the case of a man driving a truck or a bus should he fall asleep for a few seconds, his truck or bus goes into the ditch. We have all known of experiences of that kind. Consequently it does seem to me that in the interest of the safety of the people themselves riding on busses and likewise with reference to the safety of the general public on the highways, hours of service should be regulated" (Hearings on S. 1629, 74th Cong., 1st Sess., *supra*, p. 184).

There was ample additional testimony before the Senate Committee indicating that the sole reason for providing for the regulation of hours of service was to promote and foster safety of operation, and that the only employees intended to be subjected to such regulation were the drivers or operators of motor vehicles (*Id.* at pp. 260, 364).

Stat. 1415, as amended (45 U. S. C. Secs. 61–66). Obviously Commissioner McManamy did not mean that the Commission's experience in regulating the hours of railroad employees connected with the movements of trains showed either that the Commission was qualified to regulate the hours of *all* motor-carrier employees or that such all-inclusive regulation was desirable from the standpoint of safety. Rather he plainly sought only the regulatory power as to motor-carrier employees correlative with that already exercised by the Commission as to railroad employees. So also Commissioner McManamy's reference to state regulation was to regulation in the interest of safety—that is, regulation of the maximum hours of employees whose duties affect safety of operation, which, indeed, as shown *infra*, pp. 33–37, is the fullest extent of state regulation of motor carriers which has ever been attempted.

Following Commissioner McManamy's testimony, the Senate Committee on Interstate Commerce amended the bill to include the provision suggested by the Commissioner, which is now contained in Section 204 (a) (1) and (2) of the Motor Carrier Act. That the Committee was granting to the Commission only the power for which it had asked through Commissioner McManamy, is shown by the statement of Senator Wheeler on the floor of the Senate. Senator Wheeler, the Chairman of

the Senate Committee on Interstate Commerce and the sponsor of the bill, stated:

> * * * the committee amended paragraphs (1) and (2) to confer power on the Commission to establish reasonable requirements with respect to the qualifications and maximum hours of service of employees of common and contract carriers, thus restoring provisions that were in the Rayburn bill, introduced in the 73rd Congress. This suggestion came to us, I think, from the chairman of the legislative committee of the Interstate Commerce Commission. Suggestions were made to us by some of the labor organizations that we ought to put in the bill at this time provisions specifically limiting the hours of labor; but by reason of the fact

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* Mr. William Green, President of the American Federation of Labor and Mr. George M. Harrison, Chairman of the Railway Labor Executives Association, both urged amendments specifically limiting the number of hours of service of *drivers* in the interest of safety of operation. See letter of Mr. Green to Representative Monaghan, H. Rep. No. 1645, 74th Cong., 1st Sess., p. 7; testimony of Mr. Harrison, Hearings Before Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 74th Cong., 1st Sess., pp. 246-7.

Although these proposed amendments were not adopted, their rejection, as is evident from Senator Wheeler's statement, was dictated by a desire not to tie the hands of the Interstate Commerce Commission by an inflexible provision as to hours rather than by any feeling that the amendments were too narrow because applicable only to drivers. To the same effect as Senator Wheeler's statement, see the statement of Representative Sadowski on the floor of the House (79 Cong. Rec. p. 12205).

> that the Commission felt that they would like first to make a study of the matter, and then come back and report to Congress, or be given permission to establish these requirements later, *we left it as the Commission suggested*, giving them power to make the investigation and, if and when they found it necessary, to put in effect such rules and regulations as they might deem necessary" (79 Cong. Rec. 5652). [Italics supplied.]

That the purpose of Congress was to give the Commission power to regulate hours of service of only those employees whose duties affect safety of operation is likewise clear from the legislative history of the bill in the House of Representatives. The report of the House Committee on Interstate and Foreign Commerce expressly stated that one of the "basic principles of regulation of motor carriers as prescribed under this bill" was to:

> (9) Establish reasonable requirements to promote safety of operation and to that end prescribe qualifications and maximum hours of service of employees and standards of equipment for all carriers (H. Rept. No. 1645, 74th Cong., 1st Sess., p. 3).[7]

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[7] Further accenting the purpose of the bill to promote safety of operation of motor vehicles on the public highways through the prescription of qualifications and maximum hours of service, is the following statement made on the floor of the House by Representative Sadowski, who was in charge of the bill:

"The various regulatory features of the bill, which provides for supervision and the power to make rules, will

The striking and complete absence of any discussion either in the reports or on the floor of Congress, relating to employees other than those whose duties affect safety of operation on the highways further demonstrates that it was only these employees whom Congress had in mind when it passed the Motor Carrier Act. Not a word was said by anybody suggesting regulation of all employees. No mention was made of warehousemen or clerks or stenographers or bookkeepers or accountants. It can hardly be presumed that Con-

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tend greatly to promote careful operation for safety on the highways, and I think I can speak for nearly all the members of the committee when I say that the Interstate Commerce Commission deserves a vote of confidence that they will formulate a set of reasonable rules, practical for the various types of carriers, including therein maximum labor-hours service on the highway" (79 Cong. Rec., p. 12206).

The views of other Congressmen were to the same effect. Representative Monaghan, in discussing the report of the House Committee on Interstate and Foreign Commerce, stated:

"I submit supplemental views on S. 1629, since I am convinced that the main provisions of regulation in the interest of safety, both to the public on the highways and to those employed in driving trucks and busses throughout the country is that which would regulate hours" (H. Rep. No. 1645, 74th Cong., 1st Sess., pp. 6, 7).

The following colloquy between Representatives Schneider and Crawford is to the same effect:

"Mr. SCHNEIDER. What is the opinion of the gentleman with reference to setting maximum hours for truck drivers in the interest of safety in the highways?

"Mr. CRAWFORD. By all means, we should have safety" (79 Cong. Rec., p. 12211).

gress intended to give the Commission a broad and all-inclusive power of regulation without ever having considered the problems which would arise in the regulation of the qualifications and hours of work of such employees.

The majority of the court below refused to take the legislative history into account in reaching its decision. "The circumstances under which the section was placed in the bill", said the court, "may possibly have created a situation not contemplated by its sponsors, but to say that this is true would be pure speculation, in which we have no right to indulge, and upon which we can base no conclusion" (R. 43–44). In the light of the legislative history of Section 204 (a) (1) and (2) discussed above, we submit that the court erred in holding that the appellants' assertion as to the intent of Congress was in the realm of "speculation." The court's refusal to consider that clearly evident intent led it into holding that the Interstate Commerce Commission had been granted a power for which it had not asked, by a Congress which had not intended to make the grant.

2. *Other provisions of the Motor Carrier Act.*—The intent of Congress to grant the Interstate Commerce Commission power to regulate qualifications and maximum hours of service of only those employees whose duties affect safety of operation is also revealed by other provisions of the Motor Carrier Act.

To begin with, Subsection (3) of Section 204 (a) of the Act illuminates the intent of Congress in Subsections (1) and (2). Section 204 (a) (3) gives the Commission power "to establish for private carriers of property by motor vehicle,[8] if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment." From the fact that the Commission's power with respect to employees of private carriers is expressly limited to the promotion of "safety of operation," the majority of the court below deduced that the Commission's power under Section 204 (a) (1) and (2) was not so restricted, since those subsections contain no such express limitation.

But the differences in language clearly were occasioned by an entirely different reason—namely, the difference in the powers granted to the Commission in the different subsections. As to common carriers, Section 204 (a) (1) gave the

[8] Section 203 (a) (17) provides that as used in the Act "The term 'private carrier of property by motor vehicle' means any person not included in the terms 'common carrier by motor vehicle' or 'contract carrier by motor vehicle' who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise."

Commission power to establish requirements, not merely with respect to qualifications and maximum hours of service, but also with respect to continuous and adequate service, transportation of baggage and express, accounts, records, reports and equipment. Section 204 (a) (2) granted the Commission similar, although not so broad powers over contract carriers. As to private carriers, however, Section 204 (a) (3) granted the Commission power only to prescribe qualifications, maximum hours of service, and standards of equipment. Thus, the powers granted with respect to common and contract carriers must, with the exception of qualifications, maximum hours of service, and equipment, be exercised with some other end in view than safety of operation, whereas all the powers granted with respect to private carriers were in the interest of safety. In the drafting of Section 204 (a) (1) and (2), Congress could not, therefore, provide that safety of operation was the end to be considered in the exercise of *all* of the powers granted, as it provided in Section 204 (a) (3) with reference to the limited powers granted over private carriers.

What Section 204 (a) (3) does show is that the word "employees" does not mean "all employees." In Section 204 (a) (3) the word "employees," though standing alone and unqualified, unquestionably and admittedly means only those employees whose duties affect safety of operation. The word

should not be given a different meaning in Subsection 204 (a) (1) and (2). As has been demonstrated, the legislative history shows that Congress contemplated regulation of qualifications and maximum hours of service only in the interest of safety, and hence undoubtedly intended the same result in all three subsections of Section 204 (a). From the standpoint of safety of operation on the highways, a private carrier is no different from a common or contract carrier. To hold that there is a greater power over qualifications and maximum hours of service in the case of common and contract carriers than in the case of private carriers "is to infer Congressional idiosyncrasy." *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 393.

Section 225[9] likewise indicates that in dealing with qualifications and maximum hours of service Congress was concerned solely with safety. In substance this Section authorizes the Commission to investigate and report on the need for federal regulation with respect to two matters: (1) The

[9] Section 225 reads as follows:

"The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicles; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter."

sizes and weight of motor vehicles, and (2) the qualifications and maximum hours of service of employees of motor carriers. Regulation of sizes and weight of motor vehicles is directly aimed at the promotion of safety of operation of such vehicles. In the light of the close physical connection, in Section 225, between the language authorizing investigation of the need for regulation of sizes and weight of vehicles and the language authorizing investigation of the need for regulation of qualifications and maximum hours of service, it seems clear that the purpose of the latter type of regulation is likewise the promotion of safety of operation. Nor is the Congressional purpose evidenced by this Section in any way weakened by the fact that the Commission was later given a direct power to act rather than to investigate and report back to Congress. See *supra*, pp. 15–16, 19.

The court below, rejecting the contention that these various provisions throw light upon the intent of Congress, relied upon Section 204 (b) of the Motor Carrier Act.[10] This section voided the provisions of any code for the motor-carrier in-

[10] Section 204 (b) reads as follows:

"204 (b). The provisions of any code of fair competition for any industry embracing motor carriers or for any subdivision thereof approved pursuant to the National Industrial Recovery Act or any present or future Act amendatory thereof, or supplementary thereto, or in substitution therefor, which is in conflict or inconsistent with any action under the provisions of this part, shall have no force or effect after this section becomes effective."

dustry approved under the National Industrial Recovery Act insofar as the provisions of any such code were in conflict with action under the Motor Carrier Act. The court implied (R. 42) that the Motor Carrier Act was thus intended to take the place of the National Industrial Recovery Act in the field of motor transportation. But Section 204 (b) is not indicative of an intent that the Motor Carrier Act was to be a substitute for or a continuation of the Code.[11] It was inserted simply to avoid any possible question of conflict between the Code and a completely new and different system of regulation. Suggestions made by the motor carriers themselves for continuing the Code under the Motor Carrier Act were rejected at the hearings by Senator Wheeler, the sponsor of the bill in the Senate.[12] Furthermore, the purposes and ends

[11] The code for the motor carrier industry was Code No. 278, Code of Fair Competition for the Trucking Industry, approved February 10, 1934, Article V A (1), (2), (3).

[12] Significant in this connection is the colloquy between Mr. Edward S. Brashears, the general counsel for The American Trucking Associations, Inc., and Senator Wheeler at the hearings on March 4, 1935, before the Senate Committee on Interstate Commerce (Hearings on S. 1629, 74th Cong., 1st Sess., *supra*, pp. 380–381):

"Mr. BRASHEARS. The present code for the trucking industry should be provided for in this law and could be transferred to the supervision of the Coordinator, the Coordinator taking the place generally now occupied by the National Recovery Administration.

* * * * * * *

"The CHAIRMAN (Senator WHEELER). The trouble with your suggesting about writing into this bill a continuation

sought to be achieved by the National Industrial Recovery Act were totally different from those sought in the Motor Carrier Act. The National Industrial Recovery Act was a recovery measure seeking to eliminate unfair competition among employers and to afford to employees the protection of minimum wages, maximum hours, and the right of collective bargaining, while the Motor Carrier Act is solely a transportation statute.

3. *Federal Statutes Regulating Hours of Service in Other Fields of Transportation and State Motor Carrier Statutes.*—The propriety of looking to analogous statutes for any illumination they may afford as to the Congressional intent in the Motor Carrier Act is not in doubt. In *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, in reaching the conclusion that a Regional Agricultural Credit Corporation was subject to suit, even though Congress had not

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of the code, it seems to me, is that it is entirely impracticable from the standpoint of the legislative situation, because we cannot deal with your industry and say that the code should be carried forward in this bill, and leave all the other codes out. I do not think that is a practical suggestion from the standpoint of legislation."

Of course, since the codes were invalidated by the decision of this Court in *Schechter Poultry Corp.* v. *United States*, 295 U. S. 495, on May 27, 1935, Section 204 (b), which became effective October 1, 1935, was a superfluity. Its presence in the Act as finally enacted is explicable by the fact that, when Section 204 (b) made its first appearance in the draft of S. 1629, reported out by the Senate Committee on April 12, 1935, the N. R. A. codes were still in effect.

expressly authorized suits against it, the Court placed heavy reliance on the Congressional policy evidenced by other statutes. It said (p. 389):

> It is not a textual problem; for Congress has not expressed its will in words. Congress may not even have had any consciousness of intention. The Congressional will must be divined, and by a process of interpretation which, in effect, is the ascertainment of policy immanent not merely in the single statute from which flow the rights and responsibilities of Regional, but in a series of statutes utilizing corporations for governmental purposes and drawing significance from dominant contemporaneous opinion regarding the immunity of governmental agencies from suit.

Federal regulatory statutes in the fields of transportation by rail, sea, and air demonstrate a clear Congressional policy. In the case of railroad carriers, the Hours of Service Act of March 4, 1907, c. 2939, Secs. 1, 2, 34 Stat. 1415, as amended (45 U. S. C. Secs. 61–66), imposes restrictions on the hours of labor of employees who are "actually engaged in or connected with the movement of any train" in interstate transportation.[13] In this connection it will be recalled that Commissioner Mc-

[13] In *Chicago and Alton Railroad Co.* v. *United States*, 247 U. S. 197, 199, this Court recognized the "safety" character of the statute, stating:

"The purpose of the statute is to promote safety in operating trains by preventing the excessive mental and physical strain which usually results from remaining too long at an exacting task."

Manamy in his testimony before the Senate Committee on Interstate Commerce urged the Committee to provide the Interstate Commerce Commission with powers over maximum hours of service in the field of motor-carrier transportation analogous to the powers already possessed by the Commission in the field of rail transportation. See *supra*, pp. 16–17.

In the case of carriers by water, the Seamen's Act (March 4, 1915, c. 153, Secs. 2, 13, 14, 38 Stat. 1164, 1169, 1170–1184) prescribes requirements with respect to qualifications and maximum hours of service of members of ships' crews, and equipment of ocean-going vessels.[14]

In the case of carriers by air, the Civil Aeronautics Act (June 23, 1938, c. 601, 52 Stat. 1007 (49 U. S. C. Sec. 551)) imposes the duty upon the Civil Aeronautics Authority "to promote safety of flight in air commerce by prescribing * * * (5) Reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees, of air carriers." Also, under Section 602 (b) of the Act, the Authority may impose requirements as to qualifications of airmen as it may determine "to be necessary to assure safety in air commerce."

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[14] This Court characterized all of these provisions as "safety provisions." *O'Hara* v. *Luckenbach S. S. Co.*, 269 U. S. 364, 367. In that case the Court stated:

"The general purpose of the Seamen's Act is not only to safeguard the welfare of the seamen as workmen, but, as set forth in the title, also 'to promote safety at sea.'"

The majority of the court below did not take cognizance of the well-established policy expressed in these statutes. Instead the Court pointed out (R. 41) that the limited scope of the Hours of Service Act was due to the restrictive definition of "employees" as "persons actually engaged in or connected with the movement of any train." And the Court stated that since Congress could have so defined the term "employees" in the Motor Carrier Act, its failure to do so indicated a contrary intention. But the Motor Carrier Act was not a statute dealing primarily with employees, as was the Hours of Service Act, and that is doubtless the explanation why it contains no definition of the term "employee." Furthermore, no such burden of draftsmanship is necessary where Congress has made its purpose clear. Just as in the *Keifer* case, in the absence of words specifically providing that Regional Agricultural Credit Corporation may "sue or be sued," this Court looked for the intent of Congress in analogous statutes, so here the Court may find that intent expressed, not only in the legislative history, but also in analogous statutes. To hold that Congress intended to treat employees of motor carriers differently from employees of carriers by rail, air, and water "is to impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none." *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 394.

State statutes regulating intrastate motor transportation throw further light upon the intent of Congress in enacting Section 204 (a) (1) and (2) of the Motor Carrier Act. Mr. Joseph B. Eastman, then Federal Coordinator of Transportation, succinctly stated the purpose of these statutes in his report entitled "Hours, Wages, and Working Conditions in the Intercity Motor Transport Industries," Part III, (1936), at p. 13:

> The principal objective of State legislation limiting the hours of motor-carrier employees has been to protect the traveling and shipping public, and the employees themselves, by preventing accidents likely to be occasioned by drivers who attempt to serve at the wheel when exhausted from overlong hours on duty.

At the time that the Motor Carrier Act was under consideration in Congress, forty states had regulatory measures relating to the hours of service of employees of intrastate motor carriers. It is of the utmost significance that every one of these statutes applied exclusively to drivers or helpers on the vehicles.[15] In no case were employees whose activi-

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[15] *Alabama*, General Acts, 1931, No. 273, Sec. 15; General Acts, Extra Session, 1932, No. 159, Sec. 20 (drivers and chauffeurs); *Arizona*, Rev. Code Supp., 1936, Sec. 1682n (operators and helpers); *Arkansas*, Acts 1931, Act No. 157, Sec. 1 (drivers); *California*, Stats. of 1935, Ch. 27, Sec. 602 (a); Stats. of 1935, Ch. 27, Sec. 602 (b) (drivers); *Colorado*, S. L. 1927, Ch. 134, Sec. 18; Public Utilities Comm. Rule 29

ties were not thus directly related to safety of operation embraced within the terms of these statutes.

The scope of these state regulatory acts bears significantly on the meaning that Congress intended to attach to Section 204 (a) (1) and (2)

(drivers and operators); *Connecticut*, Gen. Stats., Jan. Sessions, 1931, 1933, 1935, Ch. 82, Sec. 572c (operators); *Delaware*, Laws 1935, Ch. 39, Sec. 7 (2) (drivers and helpers); *Florida*, Acts of 1931, Ch. 14764, Sec. 19 (drivers and chauffeurs); *Georgia*, Gen. Laws 1931, Part I, Title III, No. 12, Sec. 25 (drivers); *Idaho*, Idaho Code Ann. 1932, Sec. 59-807; Public Utilities Comm., Rule 33 (drivers and operators); *Illinois*, Laws 1933, Sec. 55d (operators); *Indiana*, Acts 1935, Ch. 287, Sec. 31 (a) (drivers and operators); *Iowa*, Code 1935, Sec. 5016.01 (drivers and operators); *Kansas*, Gen. Stats. Ann. 1935, Secs. 66-1, 129; Corporation Comm., Rule 35 (operators and drivers); *Kentucky*, Acts 1932, Ch. 104, Art. IV, Sec. 7 (drivers and chauffeurs); *Maine*, Laws 1935, Ch. 146, Sec. 8 (A) (drivers); *Massachusetts*, Acts 1933, Ch. 372, Sec. 27; Acts 1934, Ch. 264, Sec. 9 (drivers); *Michigan*, P. A. 1931, No. 129, Sec. 1 (drivers); *Minnesota*, Laws 1933, Ch. 170, Sec. 16; Rules and Regulations of Railroad and Warehouse Commission, Rule 17 (drivers); *Mississippi*, Acts 1932, Ch. 332, Sec. 7 (operators); *Missouri*, Laws 1931, P. 304-316, Sec. 5274; Public Serv. Comm., Rule 57 of Gen. Order 27 (drivers); *Nebraska*, Acts 1931, Ch. 102, Sec. 1 (drivers); *Nevada*, Laws 1933, Ch. 65, Sec. 1 (drivers); *New Hampshire*, Laws 1933, Ch. 106, as amended by Ch. 169, Sec. 8 (drivers); *New Mexico*, Laws 1933, Ch. 61, Sec. 2 (drivers and chauffeurs); *New York*, Laws 1932, Ch. 471, Sec. 167 (drivers); *North Carolina*, Code of 1935, Sec. 2613 (p); Rule 83½ effective July 1, 1933 (drivers); *North Dakota*, Laws 1933, Ch. 164, Sec. 27 (drivers and helpers); *Ohio*, Laws 1933, Secs. 614-97a, 614-117, (drivers and helpers); *Oregon*, Laws 1933, Ch. 429, Sec. 8 (2) (drivers, operators, and helpers); *Rhode Island*, P. L.

especially in view of the fact that one of the purposes of Congress in passing the Motor Carrier Act of 1935 was to harmonize interstate and intrastate motor carrier transportation and thereby eliminate the advantage theretofore appertaining to interstate carriers by reason of their freedom from regulation. This purpose is clearly shown in the testimony of Commissioner McManamy before the Senate Committee on Interstate Commerce. Mr. McManamy stated:

> A further reason [for empowering the Interstate Commerce Commission to establish qualifications and maximum hours of service in the case of employees of interstate common and contract carriers] is that the regulations of many of the States contain such provisions and it would be unfair to allow interstate carriers to operate in disregard of such provisions. It is my view, therefore, that definite hours of service provisions should be included in the bill (Hearings on S. 1629, 74th Cong., 1st Sess., p. 123).

1933, Ch. 2023, Sec. 1 (drivers); *South Carolina*, Code 1932, Sec. 8516; Railroad Comm., Rule 65 (drivers and operators); *South Dakota*, Laws 1933, Ch. 140, Sec. 1 (drivers and chauffeurs); *Tennessee*, Laws 1933, Ch. 19, Sec. 6; Laws 1933, Ch. 119, Sec. 4; Railroad and Public Utilities Comm., Rule 58 (drivers and operators); *Texas*, Acts 1931, Ch. 277, Sec. 6cc (drivers and helpers); *Utah*, Acts 1933, Ch. 53, Sec. 24; Public Utilities Comm., Rule 36 (drivers and operators); *Virginia*, Laws 1932, Ch. 342, Sec. 90 (drivers); *Washington*, Laws 1935, Ch. 184, Sec. 18 (drivers and operators); *Wis-*

The majority opinion states (R. 42) that "there were also in effect in a majority of the states some sort of legislation covering, with diversity of detail and lack of uniformity, hours of service of employees, *including* drivers of motor vehicles. It is not unreasonable, in these circumstances, to assume that Congress, aware of the problem as it applied to interstate commerce and the advisability of uniformity, chose to place upon the Commission the details of its solution." (Italics supplied.) But, as has already been pointed out, the forty States which possessed statutes regulating hours of service of employees of intrastate motor carriers limited their scope to drivers and helpers. The statutes which the court below apparently had in mind when it made the statement just quoted, were statutes regulating maximum hours of service of employees in industry generally.[16] At the time in question, thirty-eight states did possess some such

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consin: Laws 1933, Ch. 488, Secs. 194.18, 194.36 (drivers); *Wyoming*, S. L. 1935, Ch. 65, Sec. 64 (drivers).

[16] The court's conclusion was apparently based on the following statement at page 13 of the brief of appellees filed in the district court:

"With further reference to the alleged lack of legislative standards, the Commission referred in 9x parte MC–28 to the fact that 44 states had some kind of regulations covering hours of service for drivers of motor vehicles. It failed to state that 38 states have regulations covering hours of service for various other employees (see U. S. Bureau of Labor Statistics Bulletin No. 616)."

statute, but the significant fact which apparently escaped the Court was that all these state statutes applied exclusively to women or minors,[17] or, where they applied to men, were confined to specifically enumerated industries or occupations, such as mining, quarrying, and manufacturing.[18] Consequently, these statutes could have no possible relevance to the Motor Carrier Act.

4. *The power to regulate was delegated, without specific standards, to a body expert in transportation matters alone.*—From its creation in 1887 the Interstate Commerce Commission has devoted itself to problems directly connected with transportation. In this field the Commission has had long experience fitting it for the task of prescribing, from the standpoint of safe and efficient operation, qualifications for employees of all types of carriers. And in carrying out its duties of enforcement under the Hours of Service Act, the Commission has had experience in the regulation

[17] See Bulletin of the Women's Bureau, No. 156, "State Labor Laws for Women," Part I—Summary (1937), pp. 1–6. For a digest of applicable legislation as of March 31, 1938, see Bulletin of the Women's Bureau, No. 156—II, "State Labor Laws for Women," Part II, Analysis of Hour Laws for Women Workers (1938), pp. 1–19.

[18] Bulletin No. 616, Bureau of Labor Statistics (1936) at page 1075. Although "common carriers" are included in the language of the Nebraska, Nevada, and North Dakota statutes, these laws have been applied only to railroad employees and seem definitely limited to them.

of hours of labor directed to the end of safety of operation. But the Commission is wholly without experience in regulating qualifications of employees generally, or hours of labor upon the basis of general social and economic criteria. It cannot lightly be assumed that Congress meant to take the Commission out of its customary field and into the field of prescribing qualifications and maximum hours of service for innumerable classes of employees of common and contract motor carriers, ranging from the office boys and stenographers through dispatchers, freight solicitors, terminal employees, warehousemen and numerous types of clerks, to the more highly paid employees of a professional and executive character such as attorneys, accountants, taxation experts, and corporation officials. The difficulties which it would face in exercising such powers were summarized by the Commission in its opinion in *Ex parte No. MC–28,* 13 M. C. C. 481, in which it held that Congress had not foisted these duties upon it. The Commission stated (pp. 485-486):

> The qualifications for drivers so prescribed, for the particular purpose in view, have been accepted by the industry as practical and reasonable and have been adopted by the officials of a number of States. Our experience and the study we necessarily made in connection with the administration of the Motor Carrier Act qualify us to prescribe such regulations, to promote safety of op-

eration. Quite the contrary would be true if we were called upon to prescribe general qualifications for all employees of such carriers. In the case of clerks, salesmen, and employees acting in an executive capacity, physical infirmities have little, if any, effect upon the ability of an employee to perform satisfactory work. Education and training are important qualifications for such employment, but other and more intangible factors are of like importance. An employee's personality, appearance, ambition, and industry are valuable and important attributes. It would be a very difficult task, and one wholly foreign to the Commission's normal functions, to prescribe standards of such qualifications. It is our opinion that, if the statute be interpreted to give us the power to prescribe general qualifications for all employees, it would lead to an unreasonable if not an absurd result, and we must, therefore, under the rule of statutory construction already referred to, determine the intent of Congress from the legislative history of the enactment and consideration of the purposes of the act as a whole.

The court below points out that it would be within the *power* of Congress to impose this burden upon the Commission.[19] No contention to the con-

[19] The court sought to minimize the difficulties imposed upon the Commission by stating (R. 42–43) that its "fear that it may be called upon to establish qualifications for executive officials, solicitors, and lawyers, is overstrained. None of these classes is within the category of 'employees'

trary was ever made by the appellants. But the extent of the burden constitutes strong evidence that Congress did not intend it. Nor is it likely that such extraneous duties would have been heaped upon the Commission without even having been mentioned in the Committee reports or on the floor of Congress.

In addition, had Congress intended to place upon the Commission the duty to prescribe qualifications and maximum hours of service for *all* employees of common and contract motor carriers, some Congressional direction to aid the Commission would

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as that word is used in public service or labor legislation." But the statutes characterized by the court as "public service or labor legislation" do not support its position. Thus, the Fair Labor Standards Act, June 25, 1938, c. 676, Sec. 3, 52 Stat. 1060 (29 U. S. C., Supp. V, Sec. 203 (e)); the Railway Labor Act, May 20, 1926, c. 347, 44 Stat. 577, as amended (45 U. S. C., Sec. 151); the Railroad Retirement Act, August 29, 1935, c. 812, 49 Stat. 967, as amended (45 U. S. C., Supp. V, Sec. 228a (b)); and the Social Security Act, August 14, 1935, c. 531, 49 Stat. 620, Sec. 1101, as amended (42 U. S. C., Supp. V, Secs. 1107, 1301 (a) (6)), all contain definitions of the word "employees" which include professional, executive, administrative, and supervisory employees. Under the Railway Labor Act, the railway carriers, in their reports to the Interstate Commerce Commission, list as "employees," attorneys, administrative employees, and executives if they are working full time for the railroad. Similarly, Section 1101 (a) (6) of the Social Security Act defines "employees" to include officers of corporations. So too, the Fair Labor Standards Act provides a specific exemption in Section 13 (a) (1) for executive, administrative, and professional employees, thus indicating that in the absence of this specific exemption such employees would be entitled to the benefits of the Act.

have been expected, particularly in view of the Commission's lack of experience in the field. Congress, however, failed to lay down any standards of the sort traditionally surrounding the regulation of hours of work. In regulating hours of labor in the past, Congress has either prescribed safety of operation as a standard to guide administrative action (Civil Aeronautics Act of June 23, 1938, c. 601, Sec. 601, 52 Stat. 1007; Seamen's Act of March 4, 1915, c. 153, Secs. 2, 13, 14, 38 Stat. 1164, 1169, 1170-1184) or has itself prescribed the specific number of hours in the statute. Hours of Service Acts (Railroad), *supra;* Hours of Service Acts (Public Works), August 1, 1892, c. 352, 27 Stat. 340, as amended (40 U. S. C., Sec. 321); Act of June 19, 1912, c. 174, 37 Stat. 137 (40 U. S. C., Sec. 324); Walsh-Healey Act, June 30, 1936, c. 881, 49 Stat. 2036, 41 U. S. C., Supp. V, Sec. 35; Fair Labor Standards Act, *supra.* The one notable exception to this Congressional policy was the National Industrial Recovery Act. While there is no question of validity under the interpretation adopted below, it is hardly to be presumed that three months after the invalidation of the National Industrial Recovery Act, in part for want of sufficient standards, the Congress intended even in this narrower field to follow such an exception rather than its general policy.

The Government does not contend, as the court below implied, that the Motor Carrier Act would be unconstitutional if interpreted to include all em-

ployees of common and contract motor carriers. *Cf. Currin* v. *Wallace*, 306 U. S. 1; *Mulford* v. *Smith*, 307 U. S. 38; *United States* v. *Rock Royal Co-op, Inc.*, 307 U. S. 533. What the Government does contend is that Congress cannot be presumed to have intended to take the Commission out of its traditional sphere of action without standards of the sort with which Congress has in the past guided the regulation of hours of service.

II

THE LEGISLATIVE HISTORY AND PURPOSES OF THE FAIR LABOR STANDARDS ACT INDICATE THAT THE MOTOR CARRIER ACT WAS INTENDED TO PROVIDE FOR THE REGULATION OF MAXIMUM HOURS OF SERVICE OF ONLY THOSE EMPLOYEES WHOSE DUTIES AFFECT SAFETY OF OPERATION

The Fair Labor Standards Act was not passed until three years after the enactment of the Motor Carrier Act. The legislative history and purposes of the Fair Labor Standards Act do, however, aid in the interpretation of the Motor Carrier Act insofar as they throw light upon the general policy and methods of Congress in regulating hours of labor.

Section 7 (a) of the Fair Labor Standards Act provides that no employer shall employ any employee engaged in interstate commerce or in the production of goods for interstate commerce for a workweek longer than 44 hours during the first year from the effective date of the Act, unless such employee receives compensation for his employ-

ment in excess of 44 hours a week at a rate not less than one and one-half times the regular rate at which he is employed. The maximum workweek became 42 hours on October 24, 1939, and will become 40 hours on October 24, 1940.

Section 13 (b) (1) exempts from these provisions employees of motor carriers subject to the jurisdiction of the Interstate Commerce Commission.[20] The legislative history of that Section demonstrates that Congress enacted it in the belief that it was exempting truck drivers. The statement of the General Counsel of the American Trucking Associations, Inc., before the Joint Committee considering the Fair Labor Standards Bills, contains no less than sixteen references to "drivers" (Joint Hearings of the Committee on Labor of the House and Committee on Education and Labor of the Senate, on H. R. 7200 and S. 2475, 75th Cong., 1st Sess., pp. 743–751). That it was drivers that Congress intended to exempt is further shown by the statement of Senator Black, the Chairman of the Senate Committee on Education and Labor which sponsored the bill, in debating the original motor carrier exemption. After referring to the

[20] "SEC. 13 (b). The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act."

exemption for railroad workers, the Senator continued:

> The amendment of the Senator from New Jersey [Mr. Moore] would apply the same principle to *truck drivers* insofar as hours of labor are concerned. It is my understanding that the hours have been regulated by the Interstate Commerce Commission recently. * * * That has occurred since the hearings before the committee. The committee were of the opinion, when we originally took up the bill for consideration, that it was exceedingly important that the *long hours of truck drivers* should be regulated in the interest of public safety. That had not been done by any other governmental agency at the time of the hearings. Consequently the amendment was not adopted by the committee. (81 Cong. Rec., p. 7875). [Italics supplied.]

Senator Black's statement, made on July 30, 1937, referred to the report of July 15, 1937, of the Examiner of the Interstate Commerce Commission, recommending regulations prescribing maximum hours for drivers of common and contract motor carriers.[21] In the opinion of the Commission, on December 29, 1937, affirming the Examiner's report and prescribing a 60-hour workweek for drivers of common and contract motor carriers, the Commission stated the position to which it has since adhered—that its power is limited to those

[21] The regulations became effective July 12, 1938.

employees whose duties affect safety of operation. "Until the Congress shall have given us a more particular and definite command in the premises," the Commission stated, "we shall limit our regulations concerning maximum hours of service to those employees whose functions in the operation of motor vehicles make such regulations desirable because of safety considerations" (3 M. C. C. 665, 667). Thus, Congress was aware of the Commission's interpretation of Section 204 (a) (1) and (2) of the Motor Carrier Act, which is under review here, at the time it passed the Fair Labor Standards Act. *Cf. New York, N. H. & H. R. Co.* v. *Int. Com. Comm.*, 200 U. S. 361; *United States* v. *Penna. R. Co.*, 242 U. S. 208; *Louisville & N. R. Co.* v. *United States*, 282 U. S. 740, 757; *United States* v. *Chicago, N. S. & M. R. Co.*, 288 U. S. 1.

A comparison of the wording of Section 13 (b) (2) of the Fair Labor Standards Act with the wording of Section 13 (b) (1) of that Act leads to the same conclusion as does the legislative history of the Act. Section 13 (b) (2) exempts "any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act," i.e., any employee of a railroad. In contrast, Section 13 (b) (1) exempts "any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service" under Section 204 of the Motor Carrier Act. The court below

(R. 43) explained away these differences in language on the ground that, had Section 13 (b) (1) been drafted in the form used in Section 13 (b) (2), all the employees of private carriers, including those not engaged in motor carrier operations, would have been exempted. That this was not the reason for the difference in language is conclusively shown by the fact that the motor carrier exemption originally contained in the Fair Labor Standards Act applied only to *common carriers,* yet used similar language to that now contained in Section 13 (b), (1). Thus the term "employee," was defined to exclude:

> * * * any employee of any common carrier subject to the qualifications and maximum hours of service provisions of the Motor Carrier Act (S. 2475, Section 2 (a) (7), August 2, 1937, 75th Cong., 1st Sess.; see also H. Rep. No. 1452, 75th Cong., 1st Sess., p. 11).

It would have been easy for Congress, had it intended to exempt all employees of common and contract carriers, to have exempted, in Section 13 (b) (1), "any employee of a common or contract motor carrier and any employee of a private motor carrier subject to the qualifications and maximum hours of service provisions of the Motor Carrier Act." From the language which was used, it is apparent that Congress intended a narrower exemption in Section 13 (b) (1) than in Section 13 (b) (2). Nor is this surprising, since Congress accorded each of

the four transportation industries different exemptions. Under Section 13 (b) (2) *all* railroad employees are exempt from the maximum hour provisions, but are subject to the minimum wage provisions of the Fair Labor Standards Act, as are employees of motor carriers. Under Section 13 (a) (3) *certain* employees of water carriers—those classified as "seamen"—are exempt from *both* wage and hour provisions. Under Section 13 (a) (4) *all* employees of carriers by air are exempt from *both* wage and hour provisions.

Finally, apart from any question of legislative history or of language, the regulation of hours of service of employees of motor carriers whose duties do not affect safety of operation is consistent with the purposes of the Fair Labor Standards Act and is inconsistent with the purposes of the Motor Carrier Act and with the traditional jurisdiction of the Interstate Commerce Commission. This is readily seen from a comparison of the two acts in the light of the purposes sought and the methods used to effectuate those purposes.

(a) *Purpose.*—The Motor Carrier Act seeks to promote the development of an adequate and efficient system of transportation by motor carrier. Motor Carrier Act, Section 202. The Fair Labor Standards Act seeks to eradicate labor conditions, resulting from long hours and low wages, which are detrimental to the health, efficiency, and general well-being of workers. Fair Labor Standards Act, Section 2. The regulation of maximum hours where safety on the highways is not involved clearly falls

within the purpose of the latter statute rather than of the Motor Carrier Act.

(b) *Regulatory Agency.*—The agency chosen by Congress to regulate hours of service under the Motor Carrier Act has no experience in the regulation of hours of labor of employees whose duties do not affect safety of operation. The agency chosen to regulate hours of work under the Fair Labor Standards Act has the duty of regulating the hours of labor of millions of employees whose work is substantially similar to that of the employees involved in this case.

(c) *Type of Regulation.*—In the field of transportation, regulation of hours of service has traditionally taken the form either of a specific limitation on the number of hours to be worked or of a grant to a regulatory agency of power to prescribe maximum hours of labor to the end of "safety of operation." See *supra,* p. 41. In fields other than transportation, Congress has regulated hours of work by prescribing specific maximum hour standards. Illustrative is the Fair Labor Standards Act, which sets maximum work-weeks of 44, 42, and 40 hours. The absence of any specific maximum hour standards for "nonsafety" employees of common and contract carriers in the Motor Carrier Act clearly evidences the intention of Congress to subject such employees to the general regulation of industrial employees contained in the Fair Labor Standards Act.

In the light of the purposes of the two Acts and of the methods adopted to achieve those purposes,

to hold that Congress intended that the Interstate Commerce Commission rather than the Wage and Hour Division should have jurisdiction over the employees of common and contract motor carriers whose duties do not affect safety of operation is to impute to the Congress a perversity not lightly to be ascribed to the national legislature.

CONCLUSION

It is respectfully submitted that the majority of the court below erred in holding that the power of the Interstate Commerce Commission under Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, is not limited to those employees whose duties affect safety of operation.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General,
THOMAS HARRIS,
Attorney,
Department of Justice.
DANIEL W. KNOWLTON,
Chief Counsel,
NELSON THOMAS,
Attorney,
Interstate Commerce Commission.
GEORGE A. MCNULTY,
General Counsel,
THOMAS TONGUE,
EDWARD J. FRUCHTMAN,
Attorneys,
Wage and Hour Division, Department of Labor.

APRIL, 1940.

APPENDIX

The Motor Carrier Act, 1935, c. 498, 49 Stat. 543, (49 U. S. C., Supp. V, Sec. 301 ff.):

Declaration of policy and delegation of jurisdiction

SEC. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part [49 U. S. C., Supp. V, Sec. 302 (a)].

* * * * *

(c) Nothing in this part shall be construed to affect the powers of taxation of the sev-

eral States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof [49 U. S. C., Supp. V, Sec. 302 (c)].

Definitions

SEC. 203. (a) As used in this part—

(17) The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle," who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise [49 U. S. C., Supp. V, Sec. 303 (a) (17)].

General duties and powers of the commission

SEC. 204.

(b) The provisions of any code of fair competition for any industry embracing motor carriers or for any subdivision thereof approved pursuant to the National Industrial Recovery Act or any present or future Act amendatory thereof, or supplementary thereto, or in substitution therefor, which is in conflict or inconsistent with any action under the provisions of this chapter, shall have no force or effect after this section becomes effective [49 U. S. C., Supp. V, Sec. 304 (b)].

Administration

Sec. 205.

(h) Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under part I: *Provided,* That, where the Commission, in respect of any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under the Urgent Deficiency Appropriations Act, October 22, 1913, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction. [49 U. S. C., Supp. V, Sec. 305 (h)].

Investigation of motor vehicle sizes, weights, and so forth

SEC. 225. The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter [49 U. S. C., Supp. V, Sec. 325].

U. S. GOVERNMENT PRINTING OFFICE: 1945

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 713.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellants*,

v.

THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET ALS., *Appellees*.

Appeal From the District Court of the United States for the District of Columbia.

BRIEF FOR APPELLEES.

J. NINIAN BEALL,
ALBERT F. BEASLEY,
Attorneys for Appellees.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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CITATIONS.

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Appeal From the District Court of the United States for the District of Columbia.

BRIEF FOR APPELLEES.

This is an appeal from the decree of the District Court of the United States for the District of Columbia, directing the Interstate Commerce Commission to take jurisdiction of the appellees' petition in the matter of establishing reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle.

Statement.

The opinion below, jurisdiction, questions presented, and statement of the case, are set forth in the brief for the appellants, and will not be repeated here.

The pertinent provisions of the Motor Carrier Act, the Fair Labor Standards Act, and the Trucking Code under the National Industrial Recovery Act are set forth in the Appendix.

The real issue involved here is whether Congress in giving the Commission jurisdiction to regulate interstate commerce by motor carriers, vested in the Commission that full, complete and flexible power necessary and proper to effectuate the policies which Congress declared; or whether Congress made an idle declaration of policy, restricted the power of the Commission, and divided jurisdiction over the important subject of regulating qualifications and hours of service of employees between two federal agencies, forty-eight states and innumerable municipalities, without any objective plan or basis for coordination of regulations. The latter is the exact result which all of the appellants' arguments lead to.

The substance of the position taken by appellant Interstate Commerce Commission is the alleged inconvenience of handling the subject, and the Labor Department would like to enlarge its jurisdiction. The principles of law and problems of the industry have from the beginning been sacrificed to convenience, even to the extent of failure and refusal to hold a hearing.

Appellees petitioned the Interstate Commerce Commission to exercise its jurisdiction under Sec. 204 of the Motor Carrier Act and to prescribe qualifications and maximum hours of service for employees of motor carriers.

The Commission denied its jurisdiction, denied appellees a hearing and dismissed the petition without ascertaining the facts. In no proceedings had the Commission heard any testimony dealing with the subject matter of the petition.

The need for a hearing in such cases was aptly stated by Mr. Justice Frankfurther, "The recognized practices of an industry give life to the dead words of a statute dealing with it." *United States* v. *Maher*, 307 U. S. 148.

Appellees allege (Bill, paragraph 8; R. 3) and appellants admit (R. 25, 27, 32), "The business of transporting passengers and property in interstate and foreign commerce by motor vehicle for hire has long been recognized as one impressed with a public interest and requiring regulation to eliminate unfair and destructive competitive practices, to promote economical and efficient service, and to establish standards of safety for the protection of the public."

The District Court, of necessity, decided the case on the plain language of the statute and upon consideration of the *pro forma* aids to construction, such as matters contained in the legislative history of the law and the reports of the Commission.

The District Court unanimously found that the letter of the statute plainly conferred general jurisdiction on the Commission. Two justices found that both the letter and purposes of the statute conferred jurisdiction on the Commission. One justice dissented from the result and apparently based the dissent on the ground that Congress did not mean what it said, and that the Commission would be required to deal with matters and subjects foreign to transportation.

Summary of Argument.

I. Section 204(a) (1) and (2) of the Motor Carrier Act is clear in terms and meaning, confers full jurisdiction upon the Commission, and there is no occasion for construction.

The Motor Carrier Act, 1935, contains a broad declaration of policy, and a comprehensive plan for the regulation of common and contract carriers by motor vehicle in interstate commerce. Section 202 of the Act declares the congressional policy and confers jurisdiction upon the Commis-

sion. It declares a policy to include fostering sound economic conditions, promoting adequate, economical and efficient service, and the prevention of unfair or destructive competitive practices; and it vests in the Interstate Commerce Commission jurisdiction to regulate transportation by motor vehicle, the procurement thereof and the provision of facilities therefor. The powers and duties conferred upon the Commission in and by Section 204(a) (1) and (2) are to regulate such carriers "as provided in this part" ("part" means the entire Act as it was enacted as Part II of the Interstate Commerce Act); and "to that end" the Commission is authorized to "establish reasonable requirements" for (1) continuous and adequate service, (2) transportation of baggage and express, (3) uniform systems of accounts, records and reports, (4) preservation of records, (5) *qualifications and maximum hours of service of employees*, and (6) safety of operations and equipment.

As to the power of the Commission to establish requirements with respect to qualifications and maximum hours of service of employees, it is significant that the term "employees" is not limited, and that the only limitation upon the authorized requirements is that they be "reasonable". Thus, it is apparent that the terms of Section 204(a) (1) and (2) apply with respect to *all* employees of common and contract carriers by motor vehicle; and, as no "reasonable requirement" could ever cause a harsh, oppressive or absurd result, there is no reason to construe the section to mean anything else.

II. The legislative history of the Motor Carrier Act and related acts discloses a clear congressional intention that the Commission shall regulate hours of service and qualifications for all purposes within the declaration of policy and legislative standards set forth in Section 204, and that the Commission's jurisdiction shall be exclusive.

An analysis of the background of the regulation of the trucking industry under the National Industrial Recovery Act, and of the presentations made before and in Congress

indicate clearly that Congress intended to confer full jurisdiction upon the Commission to establish requirements as to qualifications and hours of service of employees of common and contract carriers by motor vehicle.

The matter of the Commission's jurisdiction over qualifications and maximum hours of service of employees was before Congress when the Fair Labor Standards Act was enacted. The Commission's jurisdiction was recognized by the exemption put in Section 13(b) of the Fair Labor Standards Act. The different language employed with respect to motor carriers is the result of the difference in the private carrier situation. It clearly contemplates an exemption of all employees of common and contract carriers by motor vehicle.

Quite recently the Congress has taken action upon pending transportation legislation which shows that it considers the Commission's jurisdiction to transcend considerations of safety of operaton.

III. The nature of interstate transportation business makes it necessary that one administrative agency have power to regulate qualification and maximum hours of service for all business purposes, and the Commission is the only agency charged by Congress with the duty of executing its transportation policy.

One of the cardinal requisites to regulation of transportation agencies is flexibility. This was clearly made to appear in the hearings on the bills which became the Motor Carrier Act. Of almost equal importance is the need for avoiding conflicting jurisdiction. This was emphasized before Congress.

There can be no divided jurisdiction between the Interstate Commerce Commission, the Administrator, Wage and Hour Division, Department of Labor, the forty-eight states, and the innumerable municipalities, with respect to the qualifications and hours of service of employees in their relations to any phase of interstate transportation by motor vehicle. The states cannot regulate interstate commerce,

and certainly municipal governments cannot do so; yet, the argument made by appellants would lead to that result, for if the Fair Labor Standards Act applies, then it carries over into effect any state statute or municipal ordinance more restrictive in terms. The position taken by appellants would lead to an unconstitutional result, because authority would be delegated to states without any standards or policy declared.

ARGUMENT.

Point 1.

Section 204(a)(1) and (2) of the Motor Carrier Act is clear in terms and meaning; confers full jurisdiction on the Commission; and there is no occasion for construction.

Section 204 is the section of the Motor Carrier Act which confers powers and duties upon the Interstate Commerce Commission. It authorizes the Commission to regulate common and contract carriers by motor vehicle "as provided in this part, and to that end the Commission may establish reasonable requirements with respect to * * * qualifications and maximum hours of service of employees."

The language of the statute is plain, and the District Court so found.

Where the language is plain, there is no room for construction. The rule that "the province of construction lies wholly within the domain of ambiguity," is too well established to require extensive citations of authorities. Thus, only a few references to such authorities will be made.

In *Van Camp* v. *American Can Co.*, 278 U. S. 245, this court said:

> * "These facts bring the case within the terms of the statute, unless the words 'in any line of commerce' are to be given a narrower meaning than a literal reading of them conveys. The phrase is comprehensive and means that if the forbidden effect or tendency is produced in one out of all the various lines of commerce,

the words 'in any line of commerce' literally are satisfied. The contention is that the words must be confined to the particular line of commerce in which the discriminator is engaged, and that they do not include a different line of commerce in which purchasers from the dicriminator are engaged in competition with one another. In support of this contention, we are asked to consider reports of congressional committees and other familiar aids to statutory construction. But the general rule that 'the province of construction lies wholly within the domain of ambiguity,' *Hamilton* v. *Rathbone*, 175 U. S. 414, 419, 421, 20 S. Ct. 155, 158, (44 L. Ed. 219), is too firmly established by the numerous decisions of this court either to require or permit us to do so. The words being clear, they are decisive. There is nothing to construe. To search elsewhere for a meaning either beyond or short of that which they disclose is to invite the danger, in the one case, of converting what was meant to be open and precise, into a concealed trap for the unsuspecting, or, in the other, of relieving from the grasp of the statute some whom the legislature definitely meant to include. Decisions of this court, where the letter of the statute was not deemed controlling and the legislative intent was determined by a consideration of circumstances apart from the plain language used, are of rare occurrence and exceptional character, and deal with provisions which, literally applied, offend the moral sense, involve injustice, oppression or absurdity. *United States* v. *Goldenberg*, 168 U. S. 95, 103, 18 S. Ct. 3, 42 L. Ed. 394; or lead to an unreasonable result, plainly at variance with the policy of the statute as a whole. *Ozawa* v. *United States*, 260 U. S. 178, 194, 43 S. Ct. 65, 67 L. Ed. 199. Nothing of this kind is to be found in the present case."

In *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corp.*, 305 U. S., 315, it was said:

"This Court has had several occasions within the last few years to construe statutes in which conflicts between reasonable intention and literal meaning occurred. We have refused to nullify statutes, however

> hard or unexpected the particular effect, where unambiguous language called for a logical and sensible result. Any other course would be properly condemned as judicial legislation. However, to construe statutes so as to avoid results glaringly absurd, has long been a judicial function. Where, as here, the language is susceptible of a construction which preserves the usefulness of the section, the judicial duty rests upon this Court to give expression to the intendment of the law."

And, in *United States, et al.* v. *Missouri Pac. R. Co.*, 278 U. S. 269:

> "The language of that provision (Sec. 15, I. C. A.) is so clear and its meaning so plain that no difficulty attends its construction in this case. Adherence to its terms leads to nothing impossible or plainly unreasonable. We are, therefore, bound by the words employed and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. It is elementary that, where no ambiguity exists, there is no room for construction. Inconvenience or hardships, if any, that result from following the statute as written, must be relieved by legislation."

No Limitations Are Either Expressed or Implied.

Appellants recognize the force of the rule of construction laid down in the *Van Camp* case, *supra*, but seek to avoid it by pleading ambiguity and unintended results. An examination of the argument discloses that it is not the Act which they assert to be ambiguous; instead, they really insist that Congress did not mean what it said, and they ask the court to legislate. Appellants' argument is based largely on an erroneous conception of legislative power in constructing the frame of remedial statutes, to be supplemented in detail and executed by an administrative agency upon determination of the effectuating events. It would be of no legal significance if Congress did not even know of all the details which might become involved within the definite

frame of the grant of power or policy declared, and within the fixed and definite legislative standards established.

Skelton v. *State*, 173 Ind. 462; 89 N. E. 860, 90 N. E. 897:

> "It is asserted that the construction given to the Beardsley law in this case works a wide departure from the former policy of this state. A concession of this claim does not affect the duty of the court. The legislative department determines the public policy of the state, and when it has declared a particular policy in plain terms, the duty of the courts is to give it effect."

Daniels v. *State*, 150 Ind. 348; 50 N. E. 74:

This case is very complete in its treatment of the proposition that statutes may apply to conditions and situations unknown to the legislature:

> "Except in some few cases where a statute has fallen under the principle of excessively strict construction, the language of a statute is generally extended to new things which were not known and could not have been contemplated by the legislature when it was passed."

Texas & Pac. Ry. v. *Interstate Commerce Commission*, 162 U. S. 197:

> "The scope or purpose of the act is, as declared in its title, to regulate commerce. It would, therefore, in advance of an examination of the text of the act, be reasonable to anticipate that the legislation would cover, or have regard to, the entire field of foreign and nterstate commerce, and that its scheme of regulation would not be restricted to a partial treatment of the subject."

The Elkins and other acts prohibit rebating, preferences and discriminations, and they are not limited to practices known at the time of passage.

The Sherman, Clayton, and Federal Trade Commission Acts are as broad as man is ingenious.

United States v. *P. Koenig Coal Co.*, 270 U. S. 512:

> "We have often declared that the purpose of Congress in the Elkins law was to cut up by the roots every form of discrimination, favoritism and inequality (citing cases). It would be contrary, therefore, to the general intent of the law to restrain the effect of the language used so as not to include acts exactly described when they clearly effect discrimination and inequality."

Armour Packing Co. v. *United States*, 209 U. S. 56:

Referring to the Elkins Act, it was said:

> "It is not so much the particular form by which, or the motive for which, this purpose was accomplished, but the intention was to prohibit any and all means that might be resorted to to obtain or receive concessions and rebates. * * * It is the province of the judiciary to enforce laws constitutionally enacted, not to make them to suit their own views of propriety or justice."

New York, N. H. & H. R. Co. v. *I. C. C.*, 200 U. S. 361, 391:

> "The all-embracing prohibition against either directly or indirectly charging less than the published rates shows that the purpose of the statute was to make the prohibition applicable to every method of dealing by a carrier by which the forbidden result could be brought about. * * *"

The Commission has held that certain statutes cover the trucking industry, although the trucking industry was not in existence when the statutes were passed. The Clayton Anti-Trust Act was passed in 1914 and Sec. 10 makes it unlawful for a common carrier to make purchases in excess of $50,000 per year from any concern in which there are joint officers. There is nothing in the legislative history of the Clayton Anti-Trust Act to show that Congress

even thought of motor carriers. The Commission administers Sec. 10 of that Act, and issued an order in 1938 making the rules and regulations governing competitive bidding applicable to motor carriers. That was done 24 years after the Act was passed. The bare statute was followed in that case without the aid of legislative history.

No Harsh, Oppressive or Absurd Results are Possible.

The record contains no facts leading to any harsh, absurd or oppressive results. The power granted to the Commission is exactly co-extensive with the finding of need to effectuate the purposes which Congress outlined and having due regard to the purposes outlined by Congress, the limitations directed to those ends, the findings and reports required, and the limitations of reasonableness, it is impossible for the Commission to go beyond the subject matter or to deal with it more extensively than Congress intended.

If the result flowing from literal construction be directly related to the subject matter, there can be no unintended effect in the judicial sense, and if such exists in the legislative sense, it is for the legislature to correct.

Appellants cannot ignore the statute purposes, limitations and findings prescribed, and conjure up conditions and speculate as to oppressive, absurd or harsh results to flow from literal construction, *United States, et al.* v. *Missouri Pacific R. Co.*, 278 U. S. 269; and it is well established that in order to make such a plea the party so doing must bring himself within the facts and class affected, and no such person is an appellant in this case.

Even if it be conceived that Congress overstated the statutory purposes and understated the statutory limitations, there is nothing in the Act or in the legislative history of the Act upon which a dividing line might be drawn. Only an investigation by the Commission can possibly determine what employees have duties relating to safety, or

what working conditions affect unfair competitive practices, or the relation of qualifications and hours of service to the service to be rendered to the public. The facts of the present may have no relation to the facts of the future. The exemption from the terms and penalties of the Fair Labor Standards Act is related to the power of the Commission to be exercised under either present or future needs.

The Motor Carrier Act is limited to transportation, and if there are any phases of transportation which Congress does not wish to deal with, Congress alone can make that determination. It would be pure speculation for the courts to attempt to do so.

In Ex Parte MC-28, the Commission gave as one of its reasons for concluding that Congress did not intend to vest it with jurisdiction over all classes of employees, that it would be a difficult task to prescribe qualifications and maximum hours of service for all classes of employees. The Commission offered a similar reason in another case involving its failure to perform its statutory duty. The case of *U. S. ex rel. Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission*, 252 U. S. 178, was a mandamus proceeding to compel the Commission to perform its duty, and the court said:

> "It is true that the Commission held that its non-action was caused by the fact that the command of the statute involved a consideration by it of matters 'beyond the possibility of rational determination,' and called for 'inadmissible assumptions,' and the indulging in 'impossible hypotheses' as to subjects 'incapable of rational ascertainment', and that such conclusions were the necessary consequence of the Minnesota Rate Cases, 230 U. S. 352, 33 S. Ct. 729, 57 L. Ed. 1511, 48 L. R. A. N. S.) 1151, Ann. Cas. 1916A. 18.
>
> "We are of opinion, however, that, considering the face of the statute and the reasoning of the Commission, it results that the conclusion of the Commission was erroneous, an error which was exclusively caused

by a mistaken conception by the Commission of its relation to the subject, resulting in an unconscious disregard on its part of the power of Congress and an unwitting assumption by the Commission of authority which it did not possess. And the significance which the Commission attributed to the ruling in the Minnesota Rate Cases, even upon the assumption that its view of the ruling in those cases was not a mistaken one, but illustrates in a different form the disregard of the power of Congress which we have just pointed out, since, as Congress indisputably had the authority to impose upon the Commission the duty in question, it is impossible to conceive how the Minnesota Rate ruling could furnish ground for refusing to carry out the commands of Congress, the cogency of which consideration is none the less manifest, though it be borne in mind that the Minnesota Rate Cases were decided after the passage of the act in question.

"Finally, even if it be further conceded that the subject-matter of the valuations in question which the act of Congress expressly directed to be made necessarily opened a wide range of proof and called for the exercise of close scrutiny and of scrupulous analysis in its consideration and application, such assumption, we are of opinion, affords no basis for refusing to enforce the act of Congress, or what is equivalent thereto, of exerting the general power which the act of Congress gave, and at the same time disregarding the essential conditions imposed by Congress upon its exercise."

No Case Supports Appellants Argument.

Appellants cite certain cases in support of their contention that this court should first find that Congress did not mean what it said, and if that be done, then there are precedents for limiting the law by judicial construction.

None of the cases cited limit any statutes of Congress conferring jurisdiction on the Commission, and none of them limit the power of any administrative agency to first make factual findings of need within the scope of the plain language of the statute and then to regulate accordingly.

There is a real difference between the dead words of a complete and self operating statute, and statutes which must be implemented and given life from facts ascertained by an administrative body and orders issued pursuant thereto. The cases cited by appellants deal largely with dead words in self-operating statutes.

Courts occasionally prevent dead words from becoming instruments of oppression in fields remote from the subject dealt with by the statute. Where a statute is merely permissive and an administrative body must first find the requisite facts to implement a statute, it can never result in absurdity, oppression, or exceed the intent. Any action by an administrative body which would produce absurd results would fall as arbitrary and capricious action on the part of the administrative body but would not necessitate annulment of any powers conferred by the law.

United States, et al. v. *Frank O. Lowden, et al.*, No. 343, October Term, 1939, before this court, seems to be particularly in point because it involves labor conditions prescribed by the Commission and upheld by this Court. The only statutory guide was the public interest, and the only transportation factor was the welfare of the employees.

The case arose under Section 5(4)(b) of Part I of the Interstate Commerce Act, dealing with the matter of consolidations of railroads. The Commission was authorized to attach terms and conditions to its approval which would promote the public interest. The pertinent provisions of Section 5(4)(b) are as follows:

> "* * * If after such hearing the Commission finds that, subject to such terms and conditions *and such modifications as it shall find just and reasonable*, the proposed consolidation, * * * will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation, * * * *upon the terms and conditions and with the modifications so found to be just and reasonable.*" (Emphasis supplied)

The Commission attached numerous labor conditions to prevent the employees from losing their places. The conditions prescribed may be briefly summarized as follows:

> For five years after lease begins no employee shall be placed in a lower position as a result of such lease, unless
>
> Any employee dismissed, through elimination of his job or by exercise of seniority rights of another employee whose position is abolished, shall be paid a monthly allowance while deprived of employment equal to 60 per cent of his average monthly compensation during the last 12 months of employment.
>
> Any employee who suffers loss in the sale of his home, or by securing cancellation of unexpired lease, shall be protected for one year.
>
> If any employee is required to move within one year, the company is to pay his expenses.

The Commission spelled out its authority to impose these conditions with respect to labor from the general terms of the statute and particularly the provision that the consolidations approved "will promote the public interest".

The report of the Commission argues at length the relationship between the welfare of employees and the public interest and cites numerous cases in support of the position taken. The Commission apparently didn't then feel that its construction in that case led to absurd results or lacked legislative standards.

A comparison of the very general terms of Section 5(4)(b) of Part I with the precise provisions of Section 204(a)(1) and (2) of Part II, immediately discloses that under Part I they did not concern themselves with legislative history, legislative standards or even a clear statutory provision.

The Commission's report is found at 230 I. C. C. 181, wherein the Commission said:

> "The language of section 5(4)(b) is broad, and, as we view it, the only limitation is that any conditions we impose must be in the public interest. Manifestly it

would be impossible, because of the many changing situations which arise in proceedings under section 5(4), for Congress to undertake to grant specific jurisdiction to impose a particular condition or conditions in the public interest. We concur in the finding of division 4 in *St. Paul Bridge & Term. Ry. Co. Control*, 199 I. C. C. 588, that the welfare of the employees affected is one of the matters of public interest which we must consider in proceedings under section 5(4), and, therefore, are of the opinion that the conditions imposed in the proceeding herein involved are proper and relate to a subject matter within our jurisdiction. We are not attempting to exercise jurisdiction to regulate employment, nor the compensation of employees, nor their expenses. We are simply attempting in the public interest reasonably to protect those employees of the applicants who may be adversely affected economically by the grant of authority herein against unavoidable but unreasonable and unjust burdens which are not in the public interest. Accordingly, the finding of division 4 in that regard should be, and it is, affirmed."

In approving the Commission's order, the court first dealt with the question of "public interest", a term which will be found in Section 202(a) of the Motor Carrier Act. This court stated the issue as follows:

"Accepting the premise, as we may for present purposes, without considering the contention of the Commission that the conditions if just and reasonable, need not be related to other statutory standards, the issue is narrowed to a single question whether we can say, as a matter of law, that the granting or withholding of the protection afforded to the employees by the prescribed conditions can have no influence or effect upon the maintenance of an adequate and efficient transportation system which the statute recognizes as a matter of public concern. * * *

"Even if we were doubtful whether the particular provisions made here for the protection of employees could have the effect which we have indicated upon railroad consolidation and upon the adequacy and efficiency of the railroad transportation system, we could

not say that the congressional judgment that those conditions have a relation to the public interest, as defined by the statute is without rational basis (citing cases). If we are right in our conclusion that the statute is a permissible regulation of interstate commerce, the exercise of that power to foster, protect and control the commerce with proper regard for the welfare of those who are immediately concerned in it, as well as the public at large, is undoubted."

The cases cited by appellants in support of narrowing the Commission's jurisdiction by construction are not in point. Insofar as appellees have been able to discover, this Court has never by construction of general terms narrowed the meaning of those terms to deprive an administrative agency of power where the exercise of the power depended upon findings of fact to support reasonable regulations of any subject within the policy and purpose of the statute.

United States v. *Rock Royal Co-Op*, 307 U. S. 533:

"From the earliest days the Congress has been compelled to leave to the administrative officers of the Government authority to determine facts which were to put legislation into effect and the details of regulations which would implement the more general enactments. It is well settled, therefore, that it is no argument against the constitutionality of an act to say that it delegates broad powers to executives to determine the details of any legislative scheme. This necessary authority has never been denied. Panama Refining Co. v. Ryan, 293 U. S. 388; Schechter Corp. v. U. S., 295 U. S. 495; Currin v. Wallace, 306 U. S. 1. In dealing with legislation involving questions of economic adjustment, each enactment must be considered to determine whether it states the purpose which the Congress seeks to accomplish and the standards by which that purpose is to be worked out with sufficient exactness to enable those affected to understand these limits. Within these tests the Congress needs specify only so far as is reasonably practicable."

Louisville & N. R. Co. v. *United States*, 282 U. S. 740:

> "Whatever doubt or uncertainty attached to the application of the provisions of the act to the transactions under review lay in the appreciation of the facts, and appropriate action thereon, and not in the interpretation of the terms of the law after the facts have been ascertained. * * *
>
> "Long-continued practice and the approval of administrative authorities may be persuasive in the interpretation of *doubtful* provisions of a statute, but cannot alter provisions that are clear and explicit when related to the facts disclosed. A failure to enforce the law does not change it. The good faith of the carriers in the transactions of the past may be unquestioned, but that does not justify the continuance of the practice."

No Administrative Precedents Are Involved.

There is no exception to the general rule of construction in cases where administrative bodies recommended, prepared or testified before committees in connection with legislation which they are later called upon to administer.

In addition to the fact that the "usual aids to construction" may lead to uncertainty and traps; it has too often happened that those who assisted in preparing legislation had different purposes and limitations in mind, than the legislative body had.

Northern Pac. R. Co. v. *Sanders Co.*, 214 Pac. 596.

> "The court is not governed or bound by the language found in the report of a tax commission, recommending the enactment of a statute, and stating the commission's understanding as to the property taxable under specified classes."

In dealing with contemporary administrative interpretations by the Patent Office, this Court observed that the aids to construction may have weight "when choice is nicely balanced". *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corp.*, *supra*.

Administrative interpretations are not controlling.

Piedmont and Northern Ry. Co. v. *I. C. C.*, 286 U. S. 299:

"Only a word need be said with respect to the contention that governmental agencies have heretofore classified the railway as an interurban electric line. It is true that, in connection with quite diverse administrative functions, the United States Labor Board, the Postmaster General, and the Interstate Commerce Commission have classified petitioner's railway as an interurban electric line in distinction to steam railroads. Neither the administrative nor the statutory classification has, however, been uniform, and in any event is not controlling in this litigation."

Legislative Standards.

No one has suggested that full jurisdiction can offend the moral sense, involve injustice, opression or absurdity within the standards prescribed.

Congress specified the type of economic regulation which it thought would be helpful to the motor carrier industry and would be in the public interest. It said in Section 204 of the Motor Carrier Act, that it shall be the duty of the Commission to establish reasonable requirements with respect to qualifications and maximum hours of service, to the end that the provisions of Part II, the whole Motor Carrier Act, should be effectuated. It outlined in Section 202 the type of economic regulation which it had in mind. To say that Congress did not make clear its intentions, is to overlook the specific directions in Section 204 as well as the declaration of policy in Section 202.

The suggestion of a lack of legislative standards of qualifications and hours of service, for other than safety, is founded on a premise that necessarily negatives a legislative standard, even for safety.

There is nothing unconstitutional about a broad scope with proper standards, but there may be an unconstitutional delegation of power within a narrow scope without any standards. To divorce the authority, to prescribe qual-

ifications and maximum hours, from the statutory mandate that such regulations shall be to the end of effectuating all of the purposes of the Motor Carrier Act, is to divorce the authority from all standards.

The statute provides that the regulations must be reasonable. The only conceivable test of reasonableness is whether the regulations effectuate all of the provisions of the Motor Carrier Act, and not merely the safety provision. A regulation designed solely from the standpoint of maximum safety could destroy the service and inherent advantages of the industry.

The power granted to the Commission is exactly co-extensive with the finding of need to effectuate the purposes which Congress outlined, and having due regard for the purposes outlined by Congress; the limitations directed to those ends; the findings and reports required; and the limitations of reasonableness; it is impossible, within these legislative standards, for the Commission to go beyond the subject or the intent of Congress by wandering into the realms of sociological and national employment considerations.

To limit the grant of regulatory power to such particular illustrations as may be found in the debates or Committee hearings, or as were even known at the time, would, on its face, destroy the only real purpose for the existence of administrative agencies having quasi-legislative functions.

For-Hire vs. Private Carrier Regulations.

Certain phraseology in Sec. 204(a)(1), (2) and (3) of the Motor Carrier Act and in Section 13(b) of the subsequent Fair Labor Standards Act, seems to have given rise to the attempt of the Administrator of the Wage and Hour Division, Labor Department, to assert some jurisdiction over hours of service of employees of common and contract carriers.

When Congress exempted the railroad employees from the hour provisions of the Fair Labor Standards Act, it used, in Section 13(b), the following phraseology:

> "The provisions of Section 7 shall not apply with respect to * * * (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act."

The application of Part I of the Interstate Commerce Act to the employer was made the test of the exemption of the employee.

In the same section, Congress exempted employees of common, contract and private carriers by motor vehicle, and used this phraseology:

> "The provisions of Section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935; * * *."

Here, the exemption was predicated upon the jurisdiction of the Commission over all of the employees of common and contract carriers subject to paragraphs (1) and (2), and some of the employees of private carriers subject to paragraph (3).

An examination of the Motor Carrier Act discloses that the Commission does not have general jurisdiction over private carriers, and it is also perfectly clear that as to private carriers, the Commission's jurisdiction under Sec. 204(a)(3) is definitely limited to the purpose of promoting safety. But the limitations as to private carriers, under paragraph (3), have no bearing whatever on the Commission's jurisdiction over for-hire carriers under paragraphs (1) and (2). The scope and purposes of different language and different ends sought becomes clear upon consideration of the differences in classes of carriers.

The for-hire carrier is regulated for purposes of adequate public service, the prevention of unfair competition, and safety. As to the private carrier, Congress was concerned with safety alone—there is no question of public service involved—and the competitive practices of private carriers in no way affect the adequacy of the *public* transportation service or the policy of Congress.

Part I of the Interstate Commerce Act, referred to in the Fair Labor Standards Act, does not apply to private carriers by railroad, and railroads do not engage in private business on account of the prohibitions found in the "commodities clause," Section 1(8) of Part I of the Interstate Commerce Act. The exemption, in the Fair Labor Standards Act, of railroads subject to Part I of the Interstate Commerce Act, has *only the effect of exempting employers engaged in common carrier service.* The same basis for exemption could not be applied to all motor carriers subject to the Motor Carrier Act because that would have exempted all of the *non-transportation employees of the private carriers.* All private carriers by motor vehicle are engaged in some other line of business. To have used an unqualified reference to Part II of the Interstate Commerce Act (Motor Carrier Act) in creating the motor carrier exemption, similar to that used in creating the railroad exemption, would have exempted a very large number of private carrier employees having nothing to do with transportation and not subject to regulation by the Interstate Commerce Commission.

The distinction in language between paragraphs (1) and (2), and paragraph (3) of Section 204(a) of the Motor Carrier Act discloses the care with which Congress pointed out the for-hire carrier matters to be regulated and the care taken to exclude the private carrier matters which it did not wish to touch.

Appellants disregard the significant difference in the language which Congress used in paragraphs (1) and (2) of Sec. 204 covering common and contract carriers as com-

pared with the language used in paragraph (3) of said section covering private carriers. That difference can not be ignored. The District Court correctly found the real reason for the difference and gave it effect.

In the case of *Petition of Public National Bank of N. Y.*, 278 U. S. 101, the court said:

> "No rule of statutory construction has been more definitely stated or more often repeated than the cardinal rule that significance and effect shall, if possible, be accorded every word. As early as in Bacon's Abridgement, Par. 2, it was said that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant."

No question of long and consistent construction by the administrative agency is involved in this case. This is the first time that the Commission has denied its jurisdiction over this subject matter, and appellees promptly challenged the ruling.

Section 204 of the Motor Carrier Act and Sec. 13(b) of the Fair Labor Standards Act, considered in the light of the distinction between for-hire and private carriers, shows the care taken to give the Commission jurisdiction over *all employees* of all common and contract carriers, but only limited jurisdiction over such private carrier employees whose duties are related to safety.

Congress, accordingly and consistently, limited the exemption from the hour provisions of the Fair Labor Standards Act to such private carrier employees as are subject to the jurisdiction of the Commission.

The District Court carefully considered and correctly understood the purposes of Congress in making the distinction between for-hire and private carriers.

Both railroad and motor carrier emyployees are subject to the minimum wage provisions of the Fair Labor Standards Act and the exemptions run only to the hour provisions.

In mentioning motor carrier employees in the exemptions under Sec. 13(b) of the Fair Labor Standards Act, Congress merely confirmed an exemption already established by Sec. 204(b) of the Motor Carrier Act. The Fair Labor Standards Act was in substitution for the National Industrial Recovery Act.

By an assumed and unwarranted process of statutory construction, the Commission has read out of paragraphs (1) and (2) of Section 204(a) the general jurisdiction conferred, and read into paragraphs (1) and (2) the jurisdictional limitations which were set forth only in paragraph (3), thereby nullifying the legislative intent as disclosed by the context and legislative history of the statute.

The Declaration of Policy and Delegation of Jurisdiction, Sec. 202(a), referred to by the District Court, is probably the most inclusive policy ever laid down by Congress in any Act. It specifically covers destructive competitive practices and economical and efficient service in connection with common and contract carriers.

When the Motor Carrier Act was passed by the Senate, April 16, 1935, the National Industrial Recovery Act was still in effect, and the Codes under that Act covered all employees of common and contract carriers by motor vehicle, but did not cover private carriers. The Motor Carrier Act, by Sec. 204(b), superseded the National Industrial Recovery Act and all acts amendatory thereof or in substitution therefor.

The Fair Labor Standards Act made the "power" of the Commission the test of the exemption, irrespective of the exercise of the power. The exercise of the power is wholly an administrative function of the Commission, brought into play upon a finding of need, and to the extent so found.

It is significant that the exemption in Sec. 13(b) of the Fair Labor Standards Act runs to all of the power in Sec. 204 of the Motor Carrier Act, and is not limited to sub-sections or paragraphs. Sub-section 204(c) gives the Commission the power to classify common and contract carriers

and to regulate by classes, but did not touch private carriers.

This provision obviously recognizes the need for flexible administrative regulations for common and contract carriers, as distinguished from the rigidity of the Fair Labor Standards Act.

Point 2.

The legislative history of the Motor Carrier Act and related acts discloses a clear Congressional intention that the Commission shall regulate hours of service and qualifications for all purposes within the declaration of policy and legislative standards set forth in Sec. 204, and that the Commision's jurisdiction shall be exclusive.

Prior to the enactment of the Motor Carrier Act, hours of service and unfair competitive practices of common and contract carriers were dealt with in full under the National Industrial Recovery Act and Code No. 278 for the trucking industry. The Code fixed maximum hours for all classes of employees of motor carriers and specifically included clerical or office workers, rate clerks, dispatchers, helpers, watchmen, and drivers. The Code exempted fom the maximum hour provisions only those employees engaged in managerial or executive capacity, solicitors, and station managers, receiving more than $35 per week in the north and $30 per week in the south. The Motor Carrier Act superseded the Code, and that fact was made plain by many references in committee hearings and in congressional debates on S. 1629, which became the Motor Carrier Act, and no purpose can be served by quoting at length Congressional debates on the point.[1]

Sec. 204(b) of the Motor Carrier Act, dealing with supersedure of codes, is plain and provides for supersedure of

[1] Congressional Record of July 31, 1935, page 12,679, Congressman Harlan said: "* * * It (referring to S. 1629, Motor Carrier Act) includes the provisions of the trucksters' code which are now wiped out, maintaining labor hours and minimum rates. * * *"

both present or future acts, "In conflict or inconsistent with any action under the provisions of this part."

Insofar as motor carriers and other common carriers are concerned, the Fair Labor Standards Act deals exclusively with minimum wages and child labor, and the Interstate Commerce Act gives the Commission exclusive jurisdiction over maximum hours, which involves service and competition over which the Commission has jurisdiction.

The Fair Labor Standards Act regulates minimum wages under Sec. 6, but cannot impose penalty wages under Sec. 7, to force extra employees on carriers subject to regulation by the Commission.

Both Unfair Competition and Safety Were Considered by Congress.

Appellants quote the testimony of Commissioner McManamy.[2] He had charge of the Bureau of Safety for the Commission, (Minutes of the Commission, October 22, 1934) and, naturally, his thought ran to safety. No doubt, he would have been equally interested in service and unfair competition had those matters been under his jurisdiction. His quoted statements show that he merely asked that the hours of service provisions contained in a prior bill, S. 294, be included in the pending bill, S. 1629. He also testified at other hearings[2] and it appears from his testimony on

[2] Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 73rd Congress, H. R. 6836 (1934):

Page 16: Commissioner McManamy called the committee's attention to the Commission's report in Docket 18,300, *Motor Bus - Truck Operation*, 140 I. C. C. 685, wherein the Commission said: "For the present, no requirements should be made regarding the qualifications of drivers, hours of service of employees, and the size, length, weight of load, and speed of motor vehicles operating for-hire on the public highways in interstate commerce."

Page 17: "Commissioner McManamy: The Commission at that time did not include in its recommendations the establishment of

the prior bill that so long as the Commission did not seek authority to prescribe rates, it did not seek authority to prescribe hours of service. A fair reading of this testimony would appear to indicate that when the Commission came to the conclusion that it should have jurisdiction over rates, it, for that reason, decided it should have jurisdiction over hours of service.

Representatives of the American Federation of Labor testified with respect to the need for regulation of hours to prevent destructive competitive practices.[1]

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rates for transportation of property by motor truck operating over the public highway, nor any recommendations covering the safety of operation. In view of the development of the industry and in the light of further experience, the Commission now believes that such provisions should be included. * * *

"Congressman Cooper: I believe you stated a moment ago that the Commission did not think it advisable for the federal government to regulate the hours of service at the present time. Am I right there?

"Commissioner McManamy: I think you are not right, Mr. Cooper. At the time this recommendation was made in 1932, the Commission stated that, but the Commission's position at the present time is as follows: The Commission at that time, that is the time of its former report, did not include in its recommendations the establishment of rates for the transportation of property by motor trucks operating over the public highway, nor any recommendations covering the safety of operations. In view of the development of the industry and in the light of former experience, the Commission now believes that such provisions should be included. It is probably somewhat confusing on account of my way of presenting it.

"Congressman Cooper: But that takes in hours of service too?

"Commissioner McManamy: Yes, sir."

[1] Hearings on S. 1629, to amend the Interstate Commerce Act, February 25, to March 6, 1935, before Senate Comm. on Interstate & Foreign Commerce, 74th Congress, 1st Sess. Part 1—Excerpts from statement by Thomas P. O'Brien, Gen. Organizer, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the A. F. of L.

Page 118: "Labor cost is the most significant competitive variable cost. It represents about 40 to 50 percent of the total cost of

Footnote 3—Continued.

operation. Rate regulation without some underlying degree of stabilization of labor conditions is bound to be difficult of enforcement and would be unguided. It may be even conducive to the undermining of fair labor conditions by seeking to establish rates on the basis of unreasonably low labor costs with respect to wages, hours, or conditions of employment. This possibility was not a reality in the railroad industry because of the long history of unionization and widely stabilized labor conditions founded basically on the union agreements and the several federal and state laws regulating hours of service and other terms of employment, as well as the railroad labor act. In the trucking industry, special attention must be paid to this labor aspect of the problem of stabilization because of its loosely knit character, its widely diversified business organization, the preponderance of 1-man operators, the absence of labor organization in some regions, and the unreasonable practices of many operators. It is labor's position that stabilization of labor conditions must precede or at least accompany the movement toward rate and business regulation which is the underlying purpose of the present bill."

Page 119: "(d) Fair competition within the industry requires that uniform schedules of hours be prescribed for the industry."

Page 124: "In the second place, we believe that stability in the rate structure in the industry can only be assured by means of the establishment of a minimum wage, maximum hours, and conditions of employment. Without such labor conditions known to the regulatory bodies, directing the rate structure, they will proceed unguided as to the basic costs. Fair competition can only be assured if the essential cost of labor is uniform or approximately uniform. Enforcement of a rate structure will follow. The N.R.A. code has developed considerable stability within the industry by means of its labor provisions. Rates to the public are essentially a subject for public regulation and consequently a technique must be developed outside the limits of N.R.A."

Hearings before Committee on Interstate & Foreign Commerce, House of Representatives, 73rd Congress, H.R. 6836:

Page 346: Witness Corbett: "(a) Motor Transportation should be given the same regulation to prevent unsound and discriminatory rates, to control service, to prevent abuses in the capital structure, to insure correct and uniform accounting, and to govern the handling of labor problems, as has been found

Commissioner Joseph B. Eastman, who was also Coordinator of Transportation at that time, testified and was concerned with unfair competition.[6]

While some (witness Shertz, Feb. 26, 1935, p. 189, Hearings on H. R. 5262) urged Congress to regulate the industry partially by industry codes and partially through the Commission, others (witness Scheumemann, Jan. 24, 1934, P. 170, Hearings on H. R. 6836) opposed divided jurisdic-

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necessary in the railroad industry. * * * (c) Statutory limitations should be placed upon the maximum hours of service of employees in motor bus or truck service."

[5] Hearings before Sub-committee of Committee on Interstate & Foreign Commerce, House of Representatives, 74th Congress, H.R. 5262, H.R. 6016.

Page 247: Witness Harrison: "Now Mr. Shertz testified yesterday that there had been a large number of violations of the labor provisions of the Code. I think it will do no good whatever to regulate the highway carriers, or any other carriers, unless you give the employees an opportunity to make them pay decent wages and give them a reasonable standard of working conditions. Because whatever may be placed upon the employers in the way of regulations, they will overcome by taking it out of the hides of the men who work for them."

[6] Page 83, Part I of the Committee hearings on S. 1629:

"In referring to that matter, in a report published as House Document No. 89, I had this to say:

"There are, however, certain desirable things not inconsistent with Commission regulation which can often be better accomplished by a code of fair competition than in any other way, and the opportunity to accomplish such results through a code should clearly be open. For example, where employees are not well organized a code is an excellent means of *preventing exploitation of labor through the enforcement of minimum wages and maximum hours of service.* There are *doubtless certain unfair trade practices which can be well controlled in this way.* The organization of the industry brought about and fostered by a code can be of great help to Commission regulation. There is no reason why the industry in its code should not undertake self-regulation of rates so long as regulation of the rate by the Commission is not precluded where necessary."

tion, but Congress chose to give full jurisdiction to the Commission.

If legislative history is to be resorted to, to aid the plain language of this statute, then we submit that there is much legislative history indicating that a broader purpose than mere safety was intended for regulation of hours of service. The testimony of the Coordinator of Transportation and the representative of the American Federation of Labor dispel any contention that there is anything absurd about the need for regulation of hours of service to prevent destructive competitive practices.

Subsequent Legislation.

If there can possibly be any doubt with respect to the meaning of the plain language of Sec. 204 and it is desirable or appropriate to refer to legislative history for the purpose of ascertaining the will of Congress, there is little need to deal with historical fragments of thirty bills (12 Senate and 18 House) and their legislative history, extending from 1925 to 1935, and eventually leading to the enactment of the Motor Carrier Act, and speculating as to their significance. Congress has more recently considered the matter in full on two occasions. After the passage of the Motor Carrier Act, Congress re-examined the question in connection with the enactment of the Fair Labor Standards Act (29 U. S. C. A. 201, et seq.) which was passed in June, 1938.

The Seventy-fifth Congress conducted joint hearings before the Committee on Education and Labor, U. S. Senate, and the Committe on Labor, House of Representatives, on S. 2475, which bill eventually became the Fair Labor Standards Act. Among the problems considered was, to what extent, if any, should transportation agencies be dealt with in view of the national policy with respect to such agencies.

During the course of the hearings, numerous representatives of transportation labor and transportation employers

appeared and presented arguments for exemptions. The joint committee was advised that the nature of the transportation business did not lend itself to straight-jacket regulation, nor to conflicting state regulations.

The American Trucking Association (Appellee here) appeared before the Joint Committee and opposed divided jurisdiction.[7]

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[7] Joint Hearings on S. 2475, (Page 743. Excerpts from statement of J. Ninian Beall, General Counsel, American Trucking Association, Inc.:

"The Chairman: You represent the American Truckers Association?

"Mr. Beall: Mr. Chairman, my name is J. Ninian Beall. I am counsel for the American Trucking Associations, Inc.

• • •

"We are primarily concerned about conflicting jurisdiction over the same subject matter, and my appearance is limited to respectfully requesting the committee to give due consideration to these matters.

Certain conflicts already exist between Federal and State jurisdiction, and that condition will be further complicated by this bill as drawn.

"The interstate operations of the trucking industry, including rates, *hours, qualifications, and ages* of employees were placed under Federal regulation by the Motor Carrier Act, 1935.

"We ask this committee to consider first whether there is need for further regulation of this type; and if further regulation be deemed necessary to consider the necessity for some form of coordination of control over rates and income and operating expenses, including wages and hours, in the case of both intrastate and interstate trucking operations.

"This appears to us to be necessary from the standpoint of both labor and employer.

"The Motor Carrier Act, section 204, gives the Interstate Commerce Commission jurisdiction over *hours of service and qualifications* of employees.

• • •

"The outstanding development of 100 years of 'commerce clause' litigation and 50 years of Federal regulation of interstate transportation, has been the recognition of the necessity

Following this presentation, the Committee re-drafted the bill and put in the exemption which is now found in Sec. 13(b) of the Fair Labor Standards Act.

Insofar as hours of service are concerned, it would seem to be clear that the Committee regarded the previous act of Congress, known as the Motor Carrier Act, as giving the Commission jurisdiction over hours of service of all classes of employees of common and contract carriers and that the exemption from the Fair Labor Standards Act was a *complete* exemption *consistent with and equivalent to* the exemption granted other transportation agencies, such as railroads, air lines, etc.

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for uniform standards for and control of, such transportation, and the removal of conflicting jurisdictions.

* * *

"Section 22(a) of the Black-Connery wage-hour bill specifically provides that all Federal, State, and municipal regulation *shall not be superseded* if lower than regulations promulgated under this bill.

"If the resulting conflicts are imposed on the trucking industry, it will make *interstate transportation practically impossible*.

"In the trucking industry the ratio of wages to gross income is at present about 40 per cent for companies having gross income of $25,000 or more, and this is very high in relation to most of the large industries.

* * *

"To keep a public-service industry going, there *must be some plan for coordination between the power that regulates the cost of labor and the power that fixes rates*, because the margin between gross and net income is very small. A 40 per cent increase in wages in the pig iron industry would result in an increase of only 2 per cent in the total cost of producing pig iron, but a 40 per cent increase in the trucking industry would result in an increase of 16 per cent in operating cost.

"There is no margin available to absorb large increases in cost. Our best information is that the margin between gross

Congress now has before it general transportation legislation. A bill designated as S. 2009, the Wheeler-Lea bill, which was referred to by this court in *United States* v. *Lowden*, U. S. , 60 S. Ct. 248, That bill has been passed by both the Senate and House and while there is difference as to form, they have left undisturbed that full and exclusive jurisdiction over hours of service, which the Commission now has under Sec. 204 of the Motor Carrier Act. The Senate bill, S. 2009, as introduced on March 30, 1939, proposed to re-write the existing law and to limit the Commission's jurisdiction over hours of service, to safety. It was proposed to consolidate the provisions of Paragraphs (1), (2) and (3) of Sec. 204(a).[8] Appellees

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and net is not more than 5 per cent, and we have no control over the margin.

"If wages are to be regulated and hours further regulated, there should be some arrangement for coordination between regulating bodies so that a reasonable margin may be maintained.

• • •

"There has never been any unemployment in the trucking industry, but on the contrary, that industry has absorbed much of the unemployment from other industries.

• • •

"This bill is not designed to meet the requirements of the transportation industry and of the public for transportation services.

"If it be deemed desirable to apply this bill to the trucking industry, we ask that the Interstate Commerce Commission be given an appropriate degree of coordinating control, in order that wages, hours, qualifications, ages, and rates may receive consideration by one responsible body.

[8] "Sec. 34(1). The Commission, in order to promote safety of operation, may establish reasonable requirements with respect to qualifications and maximum hours of service of employees and safety of operation and equipment of common carriers and contract carriers by motor vehicle, and may establish such requirements for private carriers of property by motor vehicle if need therefor is found. • • •"

appeared before the Senate Committee and objected to the proposed change in the law.[9]

After the appearance of Mr. Lawrence, the Senate Committee restored the original broad and unrestricted language of Section 204 of the Motor Carrier Act, and the bill as passed by both Senate and House leaves the Commission's jurisdiction as it was in the Motor Carrier Act as originally passed in 1935.

This general transportation legislation is still in the hands of conferees appointed to adjust the differences. As there is no difference between the two bills insofar as these provisions are concerned, there is nothing for the conferees to adjust in that respect.

The subject has certainly been thoroughly and repeatedly considered by Congress. The Fair Labor Standards Act was passed in June, 1938, and the final decision of the Commission with respect to its jurisdiction under Sec. 204 was not rendered until May 9, 1939. The decision of the District Court was made December 4, 1939, and is known to Congress, and there is no indication that Congress has any intention of limiting the Commission's jurisdiction to safety.

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[9] Hearings before Committee on Interstate Commerce, U. S. Senate, on S. 2009, April 5, 1939, at page 134. Excerpts from testimony of John V. Lawrence, Gen. Mgr., American Trucking Assns., Inc.

> "As to section 34, paragraph (1), page 113, we are opposed to the limitation that establishment of reasonable requirements with respect to qualifications and maximum hours of employees be confined to promotion of safety of operation insofar as common and contract carriers are concerned. No such limitation appears in Section 204(a), paragraphs (1) and (2) of the Motor Carrier Act. In the Motor Carrier Act there is no limitation as to safety. It authorizes the Commission to prescribe qualifications of employees and maximum hours of service for all employees. By this change in the present Motor Carrier Act, an unfair situation would be presented. All employees of railroads are exempted from the hour provisions of the Fair Labor Standards Act of 1938."

It would be difficult to imagine a case in which more congressional attention has been directed to a particular section or paragraph of a law, or more opportunity given to change it. Congress has heard all of the arguments made here and didn't change the law—it must have meant exactly what it said.

Appellants question the clarity of the language in Section 204(a), (1) and (2) by pointing out that in the same paragraph reference is made to "safety of operation and equipment." But these are separate and distinct provisions from qualifications and hours of service. These entire paragraphs specifically include, by reference, every provision of the Act. Appellants' argument is foreclosed by the report of the Commission in *Ex Parte MC-28*, wherein it points out that the power over "qualifications and maximum hours of service of employees" was added alone and without reference to any other words (See R. pp. 15 and 16).

Clear Congressional Policy.

It will be noted that the jurisdiction conferred by Section 204 runs to both qualifications and hours of service, and the further power to classify carriers and to regulate by classes. (Sec. 204(c))

Congressional consistency in dealing with the subject of transportation is helpful here in two ways: First, a definite transportation policy has been clearly established; and, second, conflicting jurisdiction has been avoided through numerous acts.

A definite transportation policy is demonstrated by the fact that all important interstate transportation agencies are exempted, by Sec. 13(a), (b) of the Fair Labor Standards Act, from the inflexible hours of service provisions of that Act. When the Fair Labor Standards Act was passed to relieve the national employment situation, railroad employment had shrunk from over two million employees to

less than one million employees. Congress was aware of that fact, but did not choose to ameliorate that condition by including railroads under the hours of service, or job-making provisions of the Fair Labor Standards Act. Contrasted with the unhappy railroad employment situation, which Congress did not touch, the motor carrier industry absorbed, in about the same period of time, about three times as many employees as the railroads lost.

There did not exist an unemployment problem in the motor carrier industry for Congress to deal with under the Fair Labor Standards Act.

From "Automobile Facts and Figures," (1939), page 16, the following data is taken: Total number of trucks; (1918) 525,000; (1920) 1,006,082; (1935) 3,664,429; (1938) 4,224,031. At page 47, motor transportation is shown as accounting for 6,380,000 direct and indirect employees of which 3,544,956 are truck drivers (excluding farm trucks), and 177,905 bus drivers.

The report of Hugh S. Johnson, Administrator of the National Industrial Recovery Act, to the President of the United States, on February 10, 1934, and transmitting for the President's approval, Code of Fair Competition No. 278, for the trucking industry (common and contract carriers only), stated that the number of employees in the for-hire portion of the trucking industry, to be covered by said Code, was 1,200,000, and that the Code would increase that number by about 300,000.

It was suggested by the Commission in *Ex Parte MC-28* (R. 16) that the amendment to Sec. 204, giving the Commission jurisdiction over qualifications and maximum hours of service of employees was a *floor amendment*. The inference was noted by the District Court and commented on in its opinion. If the language of a floor amendment is clear, it is just as binding as that contained in a committee report. A committee amendment is nonetheless so, because it was offered on the floor, instead of contained in the committee report. Legislative strategy frequently dictates such procedure.

In *Ex Parte MC-28*, the Commission made a mistake which may have influenced its views with respect to the purposes of Congress. It said that no statements by witnesses could be found in the Committee hearings which advocated regulation of hours of service for business purposes. The attention of the District Court was called to that error, and the District Court referred in its opinion to the testimony of witnesses for labor.

Point 3.

The nature of Interstate transportation business makes it necessary that one administrative agency have power to regulate qualifications and maximum hours of service for all business purposes, and the Commission is the only agency charged by Congress with the duty of executing its transportation policy.

Throughout the Congressional hearings on the bills which became the Motor Carrier Act, two important points were repeatedly emphasized by the witnesses. First, the necessity for administrative power to prescribe flexible regulations,[10] and second, the necessity for avoiding con-

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[10]Hearings before Committee on Interstate Commerce, U. S. Senate, 72nd Congress, on S. 2793:

Page 633: Witness Wakelee:

"While a factory might shut down at a given time so as to limit the hours of employment to a definite number, it is perfectly obvious that a transportation system cannot comply with any such rule."[1]

Page 634: Same witness:

"The very purpose, the very scheme of regulation in this country as applied in every state and as applied by the Interstate Commerce Commission—the theory—is that instead of Congress trying to lay down rules which will govern in each particular case, can apply certain rules as will fit. I respectfully submit that this kind of regulation has no place in the basic law which this Congress, I hope, will pass. But it is the kind of a thing that should be referred to the Interstate Commerce Commission or whatever body you choose to give that power to, so that they can meet these conditions in different sections of the country as the facts warrant."

flicting jurisdiction."[11] The first was provided in Section 204(c) and the second in Section 204(b) of the Motor Carrier Act.

The Code was flexible and hours of service varied with the class of employees, the class of carriers, and could be averaged over periods varying from two weeks to three months. Contrasted with the flat weekly limitation imposed by the Fair Labor Standards Act, it becomes apparent why the Motor Carrier Act, with its flexible provisions (Sec. 204(c)), was made to supersede all acts supplemental or amendatory to the codes (Sec. 204(b)).

The elimination of unfair competition in the trucking industry was one of the main purposes of the Code under the National Industrial Recovery Act, and pursuant thereto, hours of service of all employees were regulated. The same purpose is stated in Section 202(a) of the Motor Carrier Act, and the Commission was given jurisdiction over hours of service in Sec. 204. The same purpose is stated in Sec. 2(a) of the Fair Labor Standards Act. Congress has consistently avoided conflicting jurisdiction over the same subject for the same purpose with respect to transportation.

Carriers subject to Interstate Commerce Commission regulation are exempt in many respects from the normal jurisdiction and application of the anti-trust laws; the Federal Trade Commission; the Security Exchange Commission; and Court receivership. These acts and agencies are subordinated to the jurisdiction of the Commission.

Congress knew that there was hopeless confusion in the state regulations covering hours of service and qualifications, referred to by the District Court, and that interstate transportation could not endure in the face of such em-

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[11] Hearings before Committee on Interstate & Foreign Commerce, House of Representatives, 73rd Congress, H. R. 6836:

Witness Scheunemann (pages 170 and 171) opposed dual regulation, part Code and part Commission, and urged coordination through the Commission.

barrassment, and to impute to Congress the intention of subjecting an interstate transportation agency to the provisions of Sec. 18 of the Fair Labor Standards Act would be in the teeth of the rule laid down by the court in *Keifer v. Reconstruction Finance Corp.*, 306 U. S. 381, not to "infer Congressional idiosyncrasy" nor "impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none."

The attention of the District Court was called to U. S. Bureau of Labor Statistics Bulletin No. 616, 1936 Edition, wherein, at pages 1075 to 1079, there is a summarization of the state regulations, showing that 44 states regulated hours of service for drivers of motor vehicles, and 38 states have regulations covering many other employees of various industries.

In exempting motor carriers from the Fair Labor Standards Act, it not only exempted them from the maximum hours provision of Sec. 7 of said Act, but, *most important*, it also exempted them from Section 18 of said Act, which perpetuates the confusion of conflicting state and municipal regulations.

> "Sec. 18. No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or *municipal ordinance* establishing a minimum wage higher than the minimum wage established under this Act, or a maximum workweek *lower* than the maximum workweek established under this Act. * * *" (Italics supplied)

Hours of service of employees is directly related to adequate, efficient, and economical carrier service, over which the Commission is specifically given jurisdiction in Sections 202(a), (b); 204(a) (1) and (2); 204(c); and 216(a), (b) of the Motor Carrier Act.

It would be idle to direct the Commission to so regulate the carriers that these objectives may be accomplished, and then to divide its jurisdiction with another federal

agency and with forty-eight states, no one of which would have responsibility for, or knowledge of, the transportation problems being dealt with by the Commission.

The Commission is specifically authorized in Sec. 202(a) to cooperate with "any organization of motor carriers in the administration and enforcement of this part.". Every means has been given the Commission by statute to inform its staff with respect to any matter entrusted to its jurisdiction.

The Commission is directed to coordinate transportation between motor carriers and rail and water carriers, Sec. 202(a), and is also given jurisdiction over through routes and joint rates with other carriers, Sec. 216(c), and divisions of joint rates, in Sec. 216(f). Clearly, only the Commission has jurisdiction over all carriers, and it is not even contended by appellants that the Fair Labor Standards Act applies (as to hours of service) to the other carriers with whom through routes and joint rates may be made.

The Commission is not only the oldest, but the largest administrative agency, and Congress has consistently delegated to the Commission all manner of duties.

The most that has been suggested, as opposed to the literal meaning of the statute, is that the Commission hasn't had any previous experience and that the task would be a difficult one. We think this Court disposed of that argument in *Kansas City Southern Ry. Co.* v. *I. C. C.*, 282 U. S. 178. Congress is not estopped from legislating on new subjects and delegating jurisdiction to administrative bodies because such bodies have not had prior experience or may plead incompetence. Congress has appropriated huge sums for the administration of the Motor Carrier Act, and the Commission has *cart blanc* powers with respect to the assistants it may employ. (Sec. 205(k)).

The Commission itself has answered the argument advanced by appellants with respect to its alleged lack of

experience. We quote from Senate Document No. 152, 73rd Congress, 2nd Session; Regulation of Transportation Agencies; Transmitted to Congress by the Chairman of the Interstate Commerce Commission; Page 39:

"2. *That the Commission is 'railroad-minded', and hence incapable of dealing wisely and effectively with the problems of other forms of transportation.*—To remedy this assumed disability, it is suggested that the Commission be reorganized, so that members may be appointed who have had extensive experience with the operation of water and motor carriers. This suggestion is based on a common but superficial thought that public regulation requires commissioners who have had actual experience with the operation of the companies to be regulated.

"The fact is that such experience is generally specialized. An operating officer of a railroad usually knows very little about rates, and a traffic officer very little about operation. Neither one is likely to know much of anything about accounting or finance or law. Regulation necessarily embraces a multitude of matters, and men of practical experience in all or any large part of these can with difficulty be found, and if found are usually not available. The opposing parties have full opportunity to present the results of practical experience when cases are heard. Commissioners should be chosen for their ability to grasp new questions readily and to assimilate and appraise evidence quickly, and they should have at their command first-class expert assistance in every branch of their work. They should not be expected to be expert specialists themselves; in fact, it is better that they should not be. The experts should be on tap, not on top. Practical railroad men have been members of the Commission, but while they have done good work, it does not stand out above the work of commissioners who had, when appointed, no such experience."

The Commission Has Jurisdiction Over Many Subjects.

It has had jurisdiction, either administrative, legislative or judicial, in whole or in part, over various subjects under the following acts:

Boiler Inspection Act; Transportation of Explosives; Ash Pan Act; Clayton Anti-Trust Act (Sec. 10); Railway Labor Act; Block Signal Act; Hours of Service Act; Standard Time Act; Securities Act; Bankruptcy Act; Panama Canal Act; Interstate Commerce Act, Part I (Rail, water, express and pipeline carriers—issuance and sale of securities—certificates of convenience and necessity—directors—accounting—valuations—telephone and telegraph—street railways); Interstate Commerce Act, Part II, Motor carriers, brokers and determination of commercial zones for cities.

States Cannot Regulate Interstate Commerce.

Appellants ignore the fact that the suggested jurisdiction under the Fair Labor Standards Act could only be a contingent jurisdiction. Its jurisdiction would be lost as soon as any state prescribed more restrictive standards. To state such a proposition with respect to an interstate transportation agency is sufficient to demonstrate that Congress intended no such result.

No state can prescribe economic regulation of interstate carriers, even in the absence of federal action. They cannot deal with unfair competitive practices, sound economic conditions, adequate and efficient service, coordination of transportation service, development and preservation of transportation systems, etc. See *Frost* v. *R. R. Comm. of Cal.*, 271 U. S. 583; *Buck* v. *Kuykendall*, 267 U. S. 307; *Missouri Pac. R.R.* v. *Stroud*, 267 U. S. 404.

General jurisdiction can only be exercised by the Commission. Congress never intended that hours of service and overtime pay basis be changed at every state line. Inspectors, solicitors, adjusters, repairmen, etc., could be under numerous state laws is one day's work under the theory advanced by appellants.

There is an Indissoluble Unity in the Provisions of the Motor Carrier Act.

The limited jurisdiction contended for by the Commission would be inconsistent with other provisions of the Motor Carrier Act. To prescribe hours of service for drivers only on the theory of safety, and to leave the hours of service of dispatchers and the employees in charge of the warehouses, fuel supplies, garages, shops, loading manifests and bills of lading, subject to entirely different and conflicting regulations promulgated by different regulatory bodies, either state or federal, would, on its face, be inconsistent with the provisions of Sec. 202(a) "to develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States" and "coordinate transportation by and regulation of motor carriers and *other carriers.*" It is conceded by everyone that the employees of other common carriers are not subject to conflicting regulations.

A conclusion of lack of jurisdiction over hours of service of all employees would be inconsistent with the provisions of Sec. 202(a) with respect to the prevention of "unfair or destructive competitive practices". There are repeated declarations and legislation by Congress, declaring that unfair labor practices were a burden on interstate commerce. The National Industrial Recovery Act, the National Labor Relations Act and the Fair Labor Standards Act are examples.

Failure to confine jurisdiction over all employees to one administrative agency would be inconsistent with provisions of Sec. 202(a) providing for the development and preservation of a highway transportation system; in that it would leave such employees subject to the conflicting jurisdiction of each of the many states and municipalities in which the carriers operate.

Also, failure to confine jurisdiction to one administrative agency would be inconsistent with the provisions of Sec. 202(b) covering "the procurement of and the *provision of facilities for* such transportation," for the reason that

hours of service have a direct relation to these matters which will be affected by conflicting state laws.

In the motor carrier industry, labor represents approximately 50 per cent of all expenses and charges, and the regulation of hours of service has a direct bearing on the costs of operations. It is inconceivable that Congress should give the Commission jurisdiction over rates and income of the carriers (Secs. 216, 217 and 218); over operating certificates and permits (Secs. 206 to 210); over services and transportation (Sec. 203(a)(19)); over the provision of facilities for transportation (Sec. 202(b)); and provide requirements for continuous and adequate service (Sec. 204(a)(1)); and expect the Commission to develop a highway transportation system properly adapted to the needs of the commerce of the United States (Sec. 202(a)), and, at the same time, leave the vital subject of hours of service and, incidentally, cost of service, subject to conflicting state and federal laws and regulatory bodies.

The foregoing references are to matters within the four corners of the Motor Carrier Act and show the need for general jurisdiction in the Commission over the subject of qualifications and maximum hours of service of all employees.

As herein shown by reference to Committee hearings and Commission reports, wages represent about 50 per cent of the operating expense in the trucking industry.

The record in the *Hours of Service Case, Ex Parte MC-2*, developed the seasonal and sporadic nature of much of the business.

Evidence before the Commission in *Ex Parte 123*; *Ex Parte MC-24*; *MC-21* and other cases, shows the industry has an operating ratio of 98 or 99 per cent. There is no margin to absorb additional costs unless rate increases, which the Commission alone can approve, be made.

The industry is competitive with the railroads. The railroads have been exempt from the penalty overtime provisions of the Fair Labor Standards Act.

In the case at bar, the legislative history is not lacking in material showing the broad transportation field which was presented to and considered by Congress.

Nowhere, either in Congress or in this case, is it denied that there is need for Interstate Commerce Commission regulations covering the subject matter. It cannot be denied in the face of the facts alleged in appellees' petition. It is not contended that the Commission is not informed with respect to the economics of transportation, including labor service and costs. It has been found by the Commission that flexible regulations are necessary, and those cases were cited by the District Court.

Necessity for Flexible Regulations.

In prescribing hours of service for the purpose of promoting safety of operations, the Commission has heretofore recognized that under the Motor Carrier Act such regulations were not to be based on safety criteria alone, but that it must take into consideration the economics of the industry and the needs of the public for adequate transportation service.

In its decision in *Ex Parte MC-2, "In the Matter of Maximum Hours of Service of Motor Carrier Employees,"* 3 M.C.C. 665, the Commission said, at page 677:

> "Similar conditions are found to a considerable extent in the long-distance moving of household goods. In this field, the shippers desire, and there probably is a necessity for, delivery of the furniture at destination in the shortest possible time. Many of the long-distance furniture vans are equipped with sleeper cabs and carry two drivers. The record is clear that this type of operation is necessary to enable prompt deliveries and that, under proper regulations, the use of sleeper cabs will not add to the hazards of operation.
>
> "Other instances could be enumerated which would show the economic need of permitting trucks to move continuously for a period of considerable duration. * * *"

In a subsequent report in *Ex Parte MC-2*, 6 M. C. C. 557, the Commission said at page 562:

> "At the argument before division 5, organized labor accepted the weekly limitation of 60 hours of duty, provided it was linked up with a daily limitation of 10 hours. The rules we shall prescribe, while in some respects less flexible than those drawn by the division, provide considerable more flexibility than would be possible if organized labor's position were accepted. Such flexibility in transportation operations is necessary to enable the rendering of service which the public interest requires. * * *"

In a still later report in *Ex Parte MC-2*, 11 M. C. C. 203, the Commission said, at page 209:

> "The witnesses testified that their labor costs represented from 40 to 50 per cent of their gross revenue. While many of the witnesses had no definite knowledge as to the ratio of drivers' wages to gross revenue, it seems clear that they equal approximately 25 per cent. Witnesses testified that, if the carriers are required to employ relief drivers on these routes, they will have to increase the total number of drivers, employed by from 25 to 33 1/3 per cent. If, as pointed out, the drivers' wages at the present time approximate 25 per cent of gross revenue, the increased costs would approximate from 6 1/4 to 8 1/3 per cent of gross revenue."
>
> "Witnesses submitted three exhibits which had been heretofore introduced in proceedings involving the fixing of rates. One of these exhibits was prepared by American Trucking Associations, Incorporated, from information obtained through questionnaires sent representative carriers, and the other two were exhibits prepared by our Bureau of Motor Carriers from reports submitted to us. These exhibits show that the net operating revenue of motor carriers in the sections to which the exhibits relate did not exceed 2 per cent of gross revenue. It therefore follows that, if the driving force must be increased to the extent indicated, many of the operations would be unprofitable and might be abandoned.

"The abandonment of operations of this character not only would do great harm to the motor-carrier industry, but shippers generally would be greatly inconvenienced. The ability of motor carriers to make overnight deliveries of less-than-carload freight has been of great value to the shipping interests of the country and has been one of the most important factors in the development of the motor-carrier industry."

It is known that no other agency has authority to prescribe flexible regulations. The existence of innumerable conflicting state regulations was known to Congress, and, as the District Court found, Congress preempted the field by enacting the Motor Carrier Act.

Appellants say that Congress had safety in mind, but they ignore other facts equally clear, and assume that Congress had nothing else in mind. These assumptions might have been foreclosed had a hearing been held on the petition.

Appellants fashion "straw men" out of conjured sociological considerations and the national unemployment problem. But nowhere in the Act is the Commission required to do or even permitted to do anything extending beyond the transportation matters outlined therein, and then it acts only after a finding and report relating the regulation to transportation by motor carriers.

Construction Contended for by Appellants Would Lead to Unconstitutional Results.

To construe Sec. 204 of the Motor Carrier Act in conjunction with Sec. 18 of the Fair Labor Standards Act to the end that states and municipalities can fix hours of service for employees of interstate carriers would be in the teeth of the decision of this court in *Panama Refining Co., et al. v. Ryan*, 293 U. S. 388. The regulations to be prescribed under Sec. 204 must be consistent with the definite legislative standards therein set forth, coupled with the further requirement under Sec. 225 that there must be a finding

and report by an administrative agency, and the still further requirement that the regulations must be reasonable. These standards and requirements insure the statutory lawfulness of the regulations. In contrast, Sec. 18 of the Fair Labor Standards Act confers unlimited authority on states and municipalities to prescribe more restrictive regulations without reference to any purpose or any standard, without any hearings or findings, without even the requirement that they be reasonable. In *Panama Refining Co.* v. *Ryan, supra*, this court, referring to Sec. 9(c) of the National Industrial Recovery Act, said, page 414:

> "The section purports to authorize the President to pass a prohibitory law. The subject to which this authority relates is defined. It is the transportation in interstate and (p. 415) foreign commerce of petroleum and petroleum products which are produced or withdrawn from storage in excess of the amount prohibited by state authority. Assuming, for the present purpose, without deciding, that the Congress has power to interdict the transportation of that excess in interstate and foreign commerce, the question whether that transportation shall be prohibited by law is obviously one of legislative policy. Accordingly, we look to the statute to see whether Congress has declared a policy with respect to that subject; whether Congress has set up a standard for the President's action; whether Congress has required any finding by the President in the exercise of the authority to enact the prohibition. * * * It does not attempt to control the production of petroleum products within a state. It does not seek to lay down rules for the guidance of state legislatures or state officers. It leaves to the states and to their constituted authorities, the determination of what production shall be permitted. It does not qualify the President's authority by reference to the basis or extent of the state's limitation of production *. * *. The Congress, in Sec. 9(c), thus declares no policy as to the transportation of the excess production. * * *
>
> (P. 420) "The point is not one of motives, but of constitutional authority, for which the basis of motives is not the substitute. * * *

(P. 421) "The Constitution provides that 'All legislative Powers here granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.' Art. 1, Sec. 1. * * * The Congress manifestly is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. * * *

(P. 432) "In creating such an administrative agency, the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performances of its function. * * * When, therefore, such an administrative agency is required, as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective."

It is elementary that no state has an inherent right to regulate interstate commerce; there can be no divided jurisdiction over interstate commerce; and when Congress has occupied the field, State coincidence is an ineffective as opposition. *Charleston & W. C. Ry. Co.* v. *Varnville Furn. Co.*, 237 U. S. 597, 604; *Southern Ry. Co.* v. *R. R. Comm. of Ind.*, 236 U. S. 439.

Commerce between the states has been confided exclusively to Congress and is not within the jurisdiction of the police power of the state unless placed there by congressional action. *Leisy* v. *Hardin*, 135 U. S. 100.

Viewing the situation in this light, Sec. 18 of the Fair Labor Standards Act cannot be construed as merely authorizing concurrent jurisdiction, but must be construed as a delegation to the states of administrative power over interstate commerce, and, as such, it would necessarily fall as an unlawful delegation of legislative power for lack of legislative standards.

An examination of Sec. 16 of the Fair Labor Standards Act discloses the severe penalties, both criminal and civil,

which are imposed for violation of that Act. There are no provisions whereby these penalties become effective upon or after any findings or determinations by either the Interstate Commerce Commission or the Administrator of the Fair Labor Standards Act. Presumably, they were effective upon the passage of the Fair Labor Standards Act. Nearly two years have passed since the Fair Labor Standards Act became effective, and the Commission has not even held a hearing for the purpose of determining what employees, such as machinists, inspectors, etc., might be subject to their jurisdiction with respect to safety, to which they claim their jurisdiction is limited.

In argument before the District Court, they conceded jurisdiction over all employees whose duties might be related to safety.

In addition to the alleged conflict in jurisdiction as between the Interstate Commerce Act and the Fair Labor Standards Act, there would be a further conflict between the Fair Labor Standards Act and the state and municipal regulations contemplated by Sec. 18 of the Fair Labor Standards Act. No motor carrier can possibly know or have any means of ascertaining the liabilities under both the criminal and civil provisions of Sec. 16 of the Fair Labor Standards Act. The construction contended for by appellants leads to an unconstitutional result by reason of the ambiguity resulting from application of both statutes. The construction contended for by appellees is the only construction which can escape the constitutional objections which would arise from a divided jurisdiction and the delegation of powers to state agencies under Sec. 18, and the unconstitutionality of the penal provisions of Sec. 16 on account of ambiguity.

The construction contended for by appellees should prevail in the light of the constitutional objections; because, as this court said in *U. S. v. Jin Fuey Moy*, 241 U. S. 394:

"A statute must be construed, if fairly possible, so as to avoid, not only the conclusion that it is unconstitutional, but also grave doubts upon the score."

Regulation of Qualifications.

Many statutes and regulations covering qualifications had nothing to do with highway safety but dealt with transportation and qualifications of employees from the standpoint of public health. The State of Oregon has regulations which cover all classes of persons handling food, and if they are suffering from a communicable disease, they are not permitted to work in any *building*, or *vehicle* occupied or used for the "production, preparation, manufacture, packing, storage, *distribution*, or *transportation* of foods." Among the employees or persons specifically named, are "any owner, employer, employee, operative, clerk, driver, or other person."

The State of Illinois has similar regulations. Under the Department of Public Health, the employment of any person suffering from communicable diseases in connection with the production or handling of foodstuffs, particularly milk or milk products, is prohibited.

The Ohio State regulations provide that "no employer shall require, permit or suffer any person to work nor shall any person work in a building, room, *vehicle* or other place occupied or used for the production, preparation, manufacture, handling, packing, storing, sale, *distribution or transportation* of food, who is afflicted with * * * any infectious or contagious disease."

New York State prohibits any person suffering from communicable diseases to be employed in any capacity, in connection with the handling of milk or cream or of any apparatus or *equipment* used in handling, storage, bottling, pasteurizing or *delivering* of milk or cream.

United States Department of Agriculture, Food and Drug Administration, provides that packers of shrimp "shall not knowingly employ in or about the establishment any person afflicted with infectious or contagious diseases."

The United States Department of Agriculture, Meat Inspection Regulations, provide "no establishment shall employ, in any department where any meat or meat product is handled or prepared, any person afflicted with tuberculosis or other communicable disease."

The Federal Meat Inspection Act was passed in 1907, and subsequently there have been numerous acts conferring authority on various government departments. These laws guard against the handling of foodstuffs by diseased persons, among such acts being the Food and Drug Act and regulations issued thereunder.

Congress knew that the federal laws and regulations prior to the Motor Carrier Act were limited to points of manufacture or preparation and did not cover transportation as was done by some of the states.

It would be idle to throw all kinds of safeguards around the production and processing of foodstuffs for interstate commerce, and then leave the bars down entirely when it comes to *transportation* of articles such as fresh meats, milk, cheese, etc., and also in connection with many vegetables and fruits which are eaten without being cooked.

The Commission prescribes rules governing the transportation of explosives and poisons by common and contract and private carriers subject to the Motor Carrier Act. The Transportation of Explosives Act applies to *common carriers* only and was passed in 1909. The Commission was given authority to prescribe rules and regulations. It was 25 years after the passage of that Act, before the issuance of rules and regulations to govern common carriers by motor vehicle. That lapse of time indicates that there was *nothing* in the legislative history to show that Congress had motor carriers in mind. The Commission fol-

lowed the letter of the law, without the aid of legislative history.

The Commission's rules not only provide how poisons should be packed for shipment, but where they should be loaded with respect to foodstuffs.

It should be deemed a necessary requirement that employees can read and write English, if the regulations relating to explosives and poison are to be effective. Such a requirement relates to qualifications with little relation to mere safety of operations.

The law requires the publication, quotation, billing and collection of exact rates. Tariffs are very complicated matters, and the public generally cannot read them. Can it be said that the Commission is without power to require the carriers to employ qualified employees?

Is it possible that there is need for state qualifications to prevent diseased persons from transporting foodstuffs in intrastate commerce, and yet no need for federal regulations covering interstate commerce?

There is nothing in the legislative history from which it may be inferred that Congress was either blind or indifferent to these matters, and the specific statutory authority to prescribe *qualifications* of employees clearly negatives any such inference.

The legislative history of the Motor Carrier Act so clearly shows the intent of Congress to provide for complete and exclusive regulation by the Commission that we venture to submit a quotation to illustrate the point.

The state regulatory commissions proposed to the committees conducting hearings on the Motor Carrier Act amendments which would have reserved police powers to the states, and such amendments were rejected. See Senate Committee hearings, page 165, and House Committee Hearings on H. R. 5262 (companion bill to S. 1629) page 60. After the committees refused to approve dual jurisdiction and conflicting regulations, an attempt was made to ac-

complish that purpose by amending the bill on the floor of the Senate. The amendment failed of passage.[12]

Upon this clear refusal by Congress to tolerate conflicting jurisdiction, the mere suggestion of difficulty on the part of the Commission is not enough to support the proposition that Congress intended to make interstate transportation subject to the conflicting provisions of the Fair Labor Standards Act.

CONCLUSION.

It is respectfully submitted that the decree of the District Court is in accordance with established law, the tenents of equity and the will of Congress and should be affirmed.

Respectfully submitted,

J. NINIAN BEALL,
ALBERT F. BEASLEY,
Attorneys for Appellees.

April, 1940.

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[12] Excerpts from Congressional Record, Tuesday, April 16, 1935—Debate on Motor Carrier Act, 1935—Senate.

Page 5953:

* * *

"Mr. Duffy: Mr. President, I offer the amendment which I send to the desk.

"The Vice-President: The amendment will be stated.

"The Chief Clerk: On page 3, after line 12, it is proposed to strike out down to line 5 on page 4 and in lieu thereof to insert the following:

"'(c) * * *; provided, however, that the laws enacted in any State and regulations thereunder that relate to the maintenance, protection, safety, or use of the highways therein, which do not discriminate against motor vehicles used in interstate commerce, shall not be deemed to be a burden on or an obstruction or impediment to interstate commerce, and the power to enact such laws and promulgate such regulations thereunder is hereby expressly recognized and confirmed to the respective states; * * *.'"

Page 5954:

"On a division, the amendment was *rejected.*"

APPENDIX.

Interstate Commerce Act, Part II.

Motor Carrier Act.

Declaration of policy and delegation of jurisdiction.

Sec. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

(b) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

Sec. 203. (a) As used in this part—

* * * *

(19) The "services" and "transportation" to which this part applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith.

General Duties and Powers of the Commission.

Sec. 204. (a) It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event that such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of Sections 204(d) and (e); 205; 220; 221; 222(a), (b), (d), (f), and (g); and 224.

* * * *

(6) To administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration; and

* * * *

(b) The provisions of any code of fair competition for any industry embracing motor carriers or for any subdivision thereof approved pursuant to the National Industrial Recovery Act or any present or future Act amendatory thereof, or supplementary thereto, or in substitution therefor, which is in conflict or inconsistent with any action under the provisions of this part, shall have no force or effect after this section becomes effective.

(c) The Commission may from time to time establish such just and reasonable classifications of brokers or of groups of carriers included in the term "common carrier by motor vehicle," or "contract carrier by motor vehicle," as the special nature of the services performed by such carriers or brokers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this part, to be observed by the carriers or brokers so classified or grouped, as the Commission deems necessary or desirable in the public interest.

Sec. 205. * * * *

(h) Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under Part 1: *Provided*, That, where the Commission, in respect of any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under the Urgent Deficiency Appropriations Act, October 22, 1913, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction.

* * * * *

(k) The Commission is authorized to employ, and to fix the compensation of, such experts, assistants, special agents, examiners, attorneys, and other employees as in its judgment may be necessary or advisable for the convenience of the public and for the effective administration of this part.

Rates, Fares, and Charges of Common Carriers by Motor Vehicle.

SEC. 216. (a) It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just

and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

APPENDIX.

[PUBLIC—No. 718—75TH CONGRESS]

[CHAPTER 676—3D SESSION]

[S. 2475]

AN ACT

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938".

Finding and Declaration of Policy.

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

Minimum Wages.

SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 8.

(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

Maximum Hours.

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Exemptions.

SEC. 13. (a) The provisions of sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee engaged in any retail or *service establishment* the greater part of whose selling or servicing is in intrastate commerce; or (3) any employee employed as a seaman; or (4) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or (5) any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or *distributing* the above products or byproducts thereof; or (6) any employee employed in agriculture; or (7) any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under section 14; or (8) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published; or (9) any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section; or (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products.

(b) The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act.

Prohibited Acts.

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14;

Penalties.

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

Relation to Other Laws.

SEC. 18. No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of

this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

APPENDIX.

Approved Code No. 278

Code of Fair Competition

for the

TRUCKING INDUSTRY

As Approved on February 10, 1934

by

President Roosevelt

Economic Effect of the Code.

During the past decade the transportation of property over the public highways has assumed significant proportions. Today it constitutes an integral part of the transportation system of the country. The Code of Fair Competition for the Trucking Industry relates to this portion of the transportation system. By reason of special circumstances, however, certain highway transportation operations have been exempted from the provisions of this Code. Having taken these exemptions into account, the trucking operations which remain subject to the provisions of the Code are conservatively estimated to utilize about 750,000 vehicles and to give employment to approximately 1,200,000 workers.

Under the Code as recommended, it is estimated that the Trucking Industry will give employment to approximately 300,000 additional wage earners, representing an increase of about 25 per cent over the employment prevailing prior to the inauguration of the National Industrial Recovery program. This reemployment, it is estimated, will increase the annual pay roll of the codified Industry by about $260,000,000, or about 27 per cent.

In contrast with other major forms of transportation, the Trucking Industry is typically a small unit, owner-operated and flexible type of transportation activity. The natural operation of these factors has produced a disorganized condition within the Industry, resulting in unstable competitive conditions. Not only has this situation tended to produce destructive competitive conditions within the Industry, but

the influences have extended substantially beyond the Industry itself and have created particularly complex problems with relation to the coordination and regulation of various transportation agencies. To date no complete and accurate data have been available to serve as a basis for the solution of these complex problems.

Article V—Hours and Wages.

A. Hours.

1. No employee in clerical or office work except rate clerks and dispatchers shall be permitted to work in excess of forty (40) hours in any one week, nor more than six (6) days in any seven (7) day period.

2. No other employees except those driving vehicles and their helper or helpers on the vehicle shall be permitted to work in excess of forty-eight (48) hours per week, averaged over a period of three (3) weeks, with a maximum of fifty-four (54) hours in any one week, nor more than twelve (12) days out of fourteen (14) days, provided, however, that they shall be paid at the rate of one and one third (1 1/3) their normal rate for all hours worked in excess of eight (8) hours in any one day or forty-eight (48) hours in any one week.

3. No person driving a vehicle or his helper or helpers on the vehicle shall be permitted to work in excess of one hundred eight (108) hours in any consecutive two (2) week period, nor more than one hundred ninety-two (192) hours in any consecutive four (4) week period, nor more than twelve (12) days in any fourteen (14) day period; except as herein otherwise provided, and they shall be paid at the rate of one and one-third (1 1/3) their normal rate for all hours worked in excess of forty-eight (48) hours in any one week, except in cases of emergency demand falling under Section 5 hereof.

5. When seasonal demands arise involving movements of perishable goods or seasonal crops, or in case of emergency demands, an employee may, with the approval in advance of the appropriate State or Regional Code Authority and the Administrator, be permitted to work an additional twelve (12) hours in any two (2) week period beyond one hundred and eight (108) hours, which additional hours need not be

averaged out within the consecutive four (4) week period. The total period for which seasonal or emergency demand may be considered to exist is to be limited to three (3) consecutive months for any type of haulage in any area or for an individual employee, except that the overtime provision in Section 3 may be stayed by the Administrator for a longer period than three (3) months for those operations where State laws restricting tonnage create an emergency lasting for a longer period.

7. The maximum hours provided above shall not apply to employees engaged in a managerial or executive capacity who receive thirty-five ($35.00) dollars per week or more in the North, or thirty ($30.00) dollars or more in the South, or solicitors performing no manual work, or station managers, where such employees are intermittently employed. Persons engaged solely as watchmen shall not be permitted to work in excess of fifty-six (56) hours in any one week nor more than six (6) days in any seven (7) day period.

8. All time spent by any employee on or in any vehicle shall be considered time worked, regardless of whether such employee is engaged in driving or in the performance of other labor, unless such employee is a relief employee off duty engaged on a vehicle equipped with a sleeping compartment. A committee constituted in like manner as the National Industrial Relations Board shall, within ninety (90) days after the effective date of this Code, submit definitions and regulations governing "off duty" and governing the practice known as "dead-heading", to be effective when approved by the Administrator.

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SUPREME COURT OF THE UNITED STATES.

No. 713.—October Term, 1939.

The United States of America, Interstate Commerce Commission, et al., Appellants, *vs.* The American Trucking Associations, Inc., et al.	Appeal from the District Court of the United States for the District of Columbia.

[May 27, 1940.]

Mr. Justice Reed delivered the opinion of the Court.

This appeal requires determination of the power of the Interstate Commerce Commission under the Motor Carrier Act, 1935, to establish reasonable requirements with respect to the qualifications and maximum hours of service of employees of motor carriers, other than employees whose duties affect safety of operation.

After detailed consideration, the Motor Carrier Act, 1935, was passed.[1] It followed generally the suggestion of form made by the Federal Coordinator of Transportation.[2] The difficulty and wide scope of the problems raised by the growth of the motor carrier industry were obvious. Congress sought to set out its purpose and the range of its action in a declaration of policy which covered the preservation and fostering of motor transportation in the public interest, tariffs, the coordination of motor carriage with other forms of transportation and cooperation with the several states in their efforts to systematize the industry.[3]

While efficient and economical movement in interstate commerce is obviously a major objective of the Act,[4] there are numerous pro-

[1] 49 Stat. 543.

[2] S. Doc. No. 152, 73rd Cong., 2d Sess., Regulation of Transportation Agencies, p. 350. See p. 25, for discussion of the preliminary steps of motor carrier regulation. Hearings on Regulation of Interstate Motor Carriers, H. R. 5262 and H. R. 6016, before the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess.; Hearings on S. 1629, Senate Committee on Interstate Commerce, 74th Cong., 1st Sess.

[3] Section 202; Maurer v. Hamilton, No. 380, this Term, decided April 22, 1940.

[4] Sections 202, 216, 217, 218.

visions which make it clear that Congress intended to exercise its powers in the non-transportation phases of motor carrier activity.[5] Safety of operation was constantly before the committees and Congress in their study of the situation.[6]

The pertinent portions of the section of the Act immediately under discussion read as follows:

SEC. 204(a). It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment . . . .

Shortly after the approval of the Act, the Commission on its own motion undertook to and did fix maximum hours of service for "employees whose functions in the operation of motor vehicles make such regulations desirable because of safety considerations."[7] A few months after this determination, the Fair Labor Standards Act was enacted.[8] Section 7 of this act limits the workweek at the normal rate of pay of all employees subject to its terms and Section 18 makes the maximum hours of the Fair Labor Standards Act subject to further reduction by applicable federal or state law or municipal ordinances. There were certain employees excepted.

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[5] Services, § 203(a)(19); brokers, § 203(a) § 204(a)(4); security issues, § 214; insurance, § 215; accounts, records reports, § 220.

[6] Maurer v. Hamilton, *supra*; Regulation of Transportation Agencies, *supra*, Highway and Safety Regulations, p. 32; Hearings on S. 1629, *supra*, pp. 122-122, 184.

[7] Ex parte No. MC-2, 3 M. C. C. 665, 667.

[8] 52 Stat. 1060.

however, from these regulations by Section 13(b). It reads as follows:

SEC. 13(b). The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; . . . .

This exemption brought sharply into focus the coverage of employees by Motor Carrier Act, Section 204(a). Clerical, storage and other non-transportation workers are under this or the Fair Labor Standards Act, dependent upon the sweep of the word employee in this act. The Commission again examined the question of its jurisdiction and in *Ex parte No. MC-28*[9] again reached the conclusion that its power under "section 204(a)(1) and (2) is limited to prescribing qualifications and maximum hours of service for those employees . . . whose activities affect the safety of operation." It added: "The provisions of section 202 evince a clear intent of Congress to limit our jurisdiction to regulating the motor-carrier industry as a part of the transportation system of the nation. To extend that regulation to features which are not characteristic of transportation nor inherent in that industry strikes us as an enlargement of our jurisdiction unwarranted by any express or implied provision in the act, which vests in us all the powers we have."[10] The Wage and Hour Division of the Department of Labor arrived at the same result in an interpretation.[11]

Shortly thereafter appellees, an association of truckmen and various common carriers by motor, filed a petition with the Commission in the present case seeking an exercise of the Commission's jurisdiction under Section 204(a) to fix reasonable requirements "with respect to qualifications and maximum hours of service of all employees of common and contract carriers, except employees whose duties are related to safety of operations; (3) to disregard its report and order in *Ex parte MC-28*."[12] The Commission reaffirmed its position and denied the petition. The appellees petitioned a

[9] 13 M. C. C. 481, 488.

[10] 13 M. C. C. 481, 489.

[11] Interpretative Bulletin No. 9, Wage & Hour Manual (1940) 168.

[12] Section 204(a)(1), (6) and (7)(e); Rules of Practice I. C. C., April 1, 1936, Rule XV.

three-judge district court to compel the Commission to take jurisdiction and consider the establishment of qualifications and hours of service of all employees of common and contract carriers by motor vehicle.[13] The Administrator of the Wage and Hour Division was permitted to intervene.[14] The district court reversed the Commission, set aside its order and directed it to take jurisdiction of the appellees' petition. A direct appeal to this Court was granted.[15]

In the broad domain of social legislation few problems are enmeshed with the difficulties that surround a determination of what qualifications an employee shall have and how long his hours of work may be. Upon the proper adjustment of these factors within an industry and in relation to competitive activities may well depend the economic success of the enterprises affected as well as the employment and efficiency of the workers. The Motor Carrier Act lays little emphasis upon the clause we are called upon now to construe, "qualifications and maximum hours of service of employees." None of the words are defined by the Section, 203, devoted to the explanation of the meaning of the words used in the Act. They are a part of an elaborate enactment drawn and passed in an attempt to adjust a new and growing transportation service to the needs of the public. To find their content, they must be viewed in their setting.

In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress.[16] There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning

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[13] Section 205(h), Motor Carrier Act; Urgent Deficiencies Act, 38 Stat. 220, 28 U. S. C. §§ 47, 47a.

[14] Cf. S. E. C. v. U. S. Realty & Improvement Co., No. 796, this Term, decided today.

[15] Judicial Code § 238; 38 Stat. 219; 49 Stat. 543, § 205(h).

[16] Story, J., in Minor v. Mechanics Bank, 1 Peters 46, 64: "But no general rule can be laid down upon this subject, further than, that, that exposition ought to be adopted in this, as in other cases, which carries into effect the true intent and object of the legislature in the enactment." Pennington v. Coxe, 2 Cranch 33, 59; Jame's v. Milwaukee, 16 Wall. 159, 161; Atkins v. Disintegrating Co., 18 Wall. 272, 301; White v. United States, 191 U. S. 545, 551; Ozawa v. United States, 260 U. S. 178, 194; United States v. Stone & Downer Co., 274 U. S. 225, 239; Gulf States Steel Co. v. United States, 287 U. S. 32, 45; Royal Indem. Co. v. American Bond & M. Co., 289 U. S. 165, 169; Lincoln v. Ricketts, 297 U. S. 373, 376; Foster v. United States, 303 U. S. 118, 120.

certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.[17]

There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning.[18] When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act.[19] Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole"[20] this Court has followed that purpose, rather than the literal words.[21] When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use,[22] however clear the words may appear on "superficial examination."[23] The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views

[17] Cf. Davies, The Interpretation of Statutes in the Light of their Policy by the English Courts, 35 Columbia Law Review 519; Radin, Statutory Interpretation, 43 Harvard Law Review 863; Landis, A Note on "Statutory Interpretation", 43 Harvard Law Review 886; R. Powell, Construction of Written Instruments, 14 Indiana Law Journal 199, 309, 324; Jones, The Plain Meaning Rule, 25 Washington University Law Quarterly 2.

[18] Taft *v.* Commissioner, 304 U. S. 351, 359; Helvering *v.* City Bank Co., 296 U. S. 85, 89; Wilbur *v.* United States, 284 U. S. 231, 237; Crooks *v.* Harrelson, 282 U. S. 55, 60; United States *v.* Mo. Pac. R. R., 278 U. S. 269, 278; Van Camp & Sons *v.* Am. Can. Co., 278 U. S. 245, 253; Caminetti *v.* United States, 242 U. S. 470, 490; Penna. R. R. *v.* International Coal Co., 230 U. S. 184, 199.

[19] Armstrong Co. *v.* Nu-Enamel Corp., 305 U. S. 315, 332; Sorrells *v.* United States, 287 U. S. 435, 446; United States *v.* Ryan, 284 U. S. 167, 176.

[20] Ozawa *v.* United States, 260 U. S. 178, 194.

[21] Helvering *v.* Morgan's, Inc., 293 U. S. 121, 126; Johnson *v.* Southern Pacific, 196 U. S. 1, 14; Popovici *v.* Agler, 280 U. S. 379; Smiley *v.* Holm, 285 U. S. 355; Williams *v.* United States, 289 U. S. 553; Maurer *v.* Hamilton, *supra*, pp. 10, 13, preliminary print.

[22] Boston Sand & Gravel Co. *v.* United States, 278 U. S. 41, 48.

[23] Helvering *v.* New York Trust Co., 292 U. S. 455, 465.

or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion.[24] Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, "excepting as a different purpose is plainly shown."[25]

The language here under consideration, if construed as appellees contend, gives to the Commission a power of regulation as to qualifications and hours of employees quite distinct from the settled practice of Congress. That policy has been consistent in legislating for such regulation of transportation employees in matters of movement and safety only. The Hours of Service Act[26] imposes restrictions on the hours of labor of employees "actually engaged in or connected with the movement of any train." The Seamen's Act[27] limits employee regulations under it to members of ships' crews. The Civil Aeronautics Authority has authority over hours of service of employees "in the interest of safety."[28] It is stated by appellants in their brief with detailed citations, and the statement is uncontradicted, that at the time of the passage of the Motor Vehicle Act "forty states had regulatory measures relating to the hours of service of employees," and every one "applied exclusively to drivers or helpers on the vehicles." In the face of this course of legislation, coupled with the supporting interpretation of the two administrative agencies concerned with its interpretation, the Interstate Commerce Commission and the Wage and Hour Division, it cannot be said that the word "employee" as used in Section 204(a) is so clear as to the workmen it embraces that we would accept its broad

[24] Cf. Committee on Ministers' Powers Report (Cmd. 4060, 1932), p. 135.

[25] United States v. Jefferson Electric Co., 291 U. S. 386, 396; United States v. Arizona, 295 U. S. 174, 188, 191; Keifer & Keifer v. R. F. C., 306 U. S. 381, 394; Ozawa v. United States, *supra*.

[26] 34 Stat. 1415.

[27] 38 Stat. 1164, 1169, 1170-84.

[28] 52 Stat. 1007, § 601(a)(5). This authority has apparently been exercised only as to pilots and copilots. Dept. of Commerce, Bureau of Air Commerce, Civil Air Regulations, No. 61, Scheduled Airline Rules (Interstate), as amended to May 31, 1938, §§ 61.518-61.5185.

est meaning. The word, of course, is not a word of art. It takes color from its surroundings and frequently is carefully defined by the statute where it appears.[29]

We are especially hesitant to conclude that Congress intended to grant the Commission other than the customary power to secure safety in view of the absence in the legislative history of the Act of

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[29] That the word "employees" is not treated by Congress as a word of art having a definite meaning is apparent from an examination of recent legislation. Thus the Social Security Act specifically provides that "The term 'employee' includes an officer of a corporation," (42 U. S. C. § 1301(a)(c)) while the Fair Labor Standards Act specifically exempts "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity. . . ." (29 U. S. C. § 213(a)(1)). In the Railroad Unemployment Insurance Act, Congress expressly recognized the variable meaning of employee even when defined at length and used only in a single act: " . . . 'employee' (except when used in phrases establishing a different meaning) means . . . " (45 U. S. C. § 351(d)). In a statute permitting heads of departments to settle claims up to $1000 arising from the negligence of "employees of the Government," Congress gives recognition to the fact that the [illegible] is not on its face all-inclusive by providing: "'Employee' shall include enlisted men in the Army, Navy and Marine Corps." (31 U. S. C. §§ 215, 216.) See also the varying definitions of "employees" in the following statutes: Railroad Retirement Act, 45 U. S. C. § 228a(b)(c); Interstate Commerce Act, 49 U. S. C. § 1(7); Emergency Railroad Transportation Act, 49 U. S. C. § 251(f); Communications Act, 47 U. S. C. § 210; National Labor Relations Act, 29 U. S. C. § 152(3); Maritime Labor Relations Act, 46 U. S. C. § 1253(c); Classification Act of 1923 (Civil Service), 5 U. S. C. § 662; U. S. Employees' Compensation Act, 5 U. S. C. § 790; Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 902; Boiler Inspection Act, 45 U. S. C. § 22; Railway Labor Act, 45 U. S. C. § 151(5).

Where the term "employee" has been used in statutes without particularized definition it has not been treated by the courts as a word of definite content. See Metcalf & Eddy v. Mitchell, 269 U. S. 514, 520 (consulting engineers performing services for states, municipalities, and water districts held not to be "employees" under statute exempting "officers and employees under . . . any State, . . . or any local subdivision thereof" from the income tax); Waskey v. Hammer, 223 U. S. 85 (mineral surveyor, appointed by the surveyor but paid by private persons, is within prohibition of statute prohibiting "employés in the General Land Office" from purchasing public land); Nashville, C. & St. L. Ry. v. Railway Employees' Dept. etc., 93 F. (2d) 340 (furloughed railroad workers entitled to priority in rehiring held "employees" within meaning of Railway Labor Act), discussed in 51 Harv. L. Rev. 1299; Latta v. Lonsdale, 107 Fed. 585 (attorney not "employee" within meaning of statute giving "employees" preference against assets of insolvent corporations); Vane v. Newcombe, 132 U. S. 220 (contractor who built lines for telegraph company not "employee" within statute giving employees liens against corporate property); Malcomson v. Wapoo Mills, 86 Fed. 192 (same); cf. United States v. Griffith, 2 F. (2d) 925 (War Department clerk receiving disability compensation held employee of government within common law rule of the District of Columbia that employee of a litigant cannot be a member of jury); see also, Hull v. Phila. & Reading Ry., 252 U. S. 475; Louisville etc. R. R. v. Wilson, 138 U. S. 501; Campbell v. Commissioner, 87 F. (2d) 128; Burnet v. Jones, 50 F. (2d) 14; Burnet v. McDonough, 46 F. (2d) 944.

any discussion of the desirability of giving the Commission broad and unusual powers over all employees. The clause in question was not contained in the bill as introduced.[30] Nor was it in the Coordinator's draft.[31] It was presented on the Senate floor as a committee amendment following a suggestion of the Chairman of the Legislative Committee of the Commission, Mr. McManamy.[32] The committee reports and the debates contain no indication that a regulation of the qualifications and hours of service of all employees was contemplated; in fact the evidence points the other way. The Senate Committee's report explained the provisions of Section 204(a)(1), (2) as giving the commission authority over common and contract carriers similar to that given over private carriers by Section 204(a)(3).[33] The Chairman of the Senate Committee ex-

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[30] S. 1629, 74th Cong., 1st Sess.

[31] S. Doc. 152, 73rd Cong., 2nd Sess., p. 352, § 304(a)(1).

[32] See the testimony of Mr. McManamy in Hearings on S. 1629 before the Senate Committee on Interstate Commerce, 74th Cong., 1st Sess., pp. 122, 123:

"The regulation of the hours of service of bus and truck operators is far more important from a safety standpoint than the regulation of the hours of service of railroad employees because the danger is greater. . . . . This could be accomplished by inserting in section 304(a)(1) and (2), lines 9 and 15, page 8, following the word 'records' in both lines, the words which appear in S. 394, as follows: 'qualifications and maximum hours of service of employees.'"

The clause in question came from § 2(a)(1) of S. 394, 74th Cong., 1st Sess., a subsection otherwise substantially like the corresponding subsection in S. 1629.

Senator Wheeler, Chairman of the Committee on Interstate Commerce and sponsor of the bill, explained the provision on the floor of the Senate: "[T]he committee amended paragraphs (1) and (2) [of § 204] to confer power on the Commission to establish reasonable requirements with respect to the qualifications and maximum hours of service of employees of common and contract carriers, . . . This suggestion came to us, I think, from the chairman of the legislative committee of the Interstate Commerce Commission. . . .

"In order to make the highways more safe, and so that common and contract carriers may not be unduly prejudiced in their competition with peddler trucks and other private operators of motor trucks, a provision was added in subparagraph 3 giving the Commission authority to establish similar requirements with respect to the qualifications and hours of service of the employees of such operators. . . ." 79 Cong. Rec. 5652.

[33] S. Rep. 482, 74th Cong., 1st Sess. The report stated: "No regulation is proposed for private carriers except that an amendment adopted in committee authorizes the Commission to regulate the 'qualifications and maximum hours of service of employees and safety of operation and equipment' of private carriers of property by motor vehicle in the event that the Commission determines there is need for such regulation. Other amendments adopted by the committee confer like authority upon the Commission with respect to common and contract carriers." Safety of operation and equipment was in the original bill.

pressed the same thought while explaining the provisions on the floor of the Senate.[34] When suggesting the addition of the clause, the Chairman of the Commission's Legislative Committee said: " . . . . it relates to safety."[35] In the House the member in charge of the bill characterized the provisions as tending "greatly to promote careful operation for safety on the highways," and spoke with assurance of the Commission's ability to "formulate a set of reasonable rules . . . including therein maximum labor-hours service on the highway."[36] And in the report of the House Committee a member set out separate views criticizing the delegation of discretion to the Commission and proposing an amendment providing for an eight-hour day for "any employee engaged in the operation of such motor vehicle."[37]

The Commisison and the Wage and Hour Division, as we have said, have both interpreted Section 204(a) as relating solely to safety of operation. In any case such interpretations are entitled to great weight. This is peculiarly true here where the interpretations involve "contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new."[38] Furthermore, the Commission's interpretation gains much persuasiveness from the fact that it was the Commission which suggested the provisions' enactment to Congress.[39]

It is important to remember that the Commission has three times concluded that its authority was limited to securing safety of operation. The first interpretation was made on December 29, 1937, when the Commission stated: " . . . until the Congress shall have given us a more particular and definite command in the premises, we shall limit our regulations concerning maximum hours of service to those employees whose functions in the operation of motor vehicles make such regulations desirable because of safety

[34] See last paragraph of remarks of Senator Wheeler, note 32 *supra*.
[35] Hearings, note 32 *supra*.
[36] 79 Cong. Rec. 12206.
[37] H. R. Rep. No. 1645, 74th Cong., 1st Sess.
[38] Norwegian Nitrogen Co. *v.* United States, 288 U. S. 294, 315.
[39] Hassett *v.* Welch, 303 U. S. 303, 310.

considerations."[40] This expression was half a year old when Congress enacted the Fair Labor Standards Act with the exemption of Section 13(b)(1). Seemingly the Senate at least was aware of the Commission's investigation of its powers even before its interpretation was announced.[41] Under the circumstances it is unlikely indeed that Congress would not have explicitly overruled the Commission's interpretation had it intended to exempt others than employees who affected safety from the Labor Standards Act.

It is contended by appellees that the difference in language between subsections (1) and (2) and subsection (3) is indicative of a congressional purpose to restrict the regulation of employees of private carriers to "safety of operation" while inserting broader authority in (1) and (2) for employees of common and contract carriers. Appellants answer that the difference in language is explained by the difference in the powers. As (1) and (2) give powers beyond safety for service, goods, accounts and records, language limiting those subsections to safety would be inapt.

Appellees call our attention to certain pending legislation as sustaining their view of the congressional purpose in enacting the Motor Carrier Act. We do not think it can be said that the action of the Senate and House of Representatives on this pending transportation legislation throws much light on the policy of Congress or the meaning attributed by that body to Section 204(a). Aside from the very pertinent fact that the legislation is still unadopted, the legislative history up to now points only to a hesitation to determine a controversy as to the meaning of the present Motor Carrier Act, pending a judicial determination.[42]

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[40] Ex parte No. MC-2, 3 M. C. C. 665, 667.

[41] 81 Cong. Rec. 7875.

[42] The pending legislation is S. 2009, 76th Cong., 1st Sess., 84 Cong. Rec. 3509. As to the point here under discussion, the report of the Senate Committee said: "Paragraph (1) of section 34 of the bill is based on the provisions of subparagraphs (1), (2), and (3) of section 204(a) of the Motor Carrier Act. In the original draft, there was inserted at the beginning of the paragraph the clause 'in order to promote safety of operations,' thus making clear that the Commission's power to regulate qualifications and maximum hours of service of employees is confined to those who have anything to do with safety of operation. This is a question with respect to which considerable doubt seems to have arisen under the wording of the present law. Upon the strenuous objection of the truckers claiming conflict between this law and the Fair Labor Standards Act, the bill [i. e., the committee amendment] restores the law to the present provisions of the Motor Carrier Act." S. Rep. No. 433, 76th Cong., 1st Sess., p. 24. The bill passed the Senate. The House bill left §204(a)(1), (2) and (3) of the present act unchanged. 84 Cong. Rec. 9459; H. R. Rep. No. 1217, 76th Cong., 1st Sess., 84 Cong. Rec. 10125.

One amendment made to the then pending Motor Carrier Act has relevance to our inquiry. Section 203(b) reads as set out in the note below.[43] The words, "except the provisions of section 204

While the bills were in conference the Chairman of the Legislative Committee of the Interstate Commerce Commission sent to the chairmen of the House and Senate Committees a letter on the House and Senate bills which suggested that both bills explicitly limit the Commission's jurisdiction over qualifications and hours of service of employees to considerations of safety. The letter stated: "While the subsection [in the Senate bill] follows the existing language of section 204 . . . . , a controversy has arisen in regard to the meaning of that language. . . . This controversy has now reached the Supreme Court. We think it may well be determined in this new legislation. In our judgment, if restrictions on hours of labor for social and economic reasons are to be imposed, this should be done by Congress, and no duty in that respect should be delegated to the Commission, which has no experience which particularly fits it for the performance of such a duty. Our authority over qualifications and hours of service of employees should, therefore, be confined to the needs of safety in operation. . . . ." On April 26, 1940, the House conferees reported to the House a compromise bill agreed on by the conference committee which left § 204(a)(1), (2), and (3) of the Motor Carrier Act unamended. 86 Cong. Rec. 7847; H. R. Rep. No. 2016, 76th Cong., 3d Sess. On May 9, 1940, the House because of disagreement with sections of this bill not here relevant voted to recommit the bill to the conference committee. 86 Cong. Rec. 8986.

[43] "(b) Nothing in this part, *except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment* shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or (4b) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended; or (5) trolley busses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service; or (6) motor vehicles used exclusively in carrying livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof); or (7) motor vehicles used exclusively in the distribution of newspapers; nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 202, shall the provisions of this part, *except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment* apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that

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